

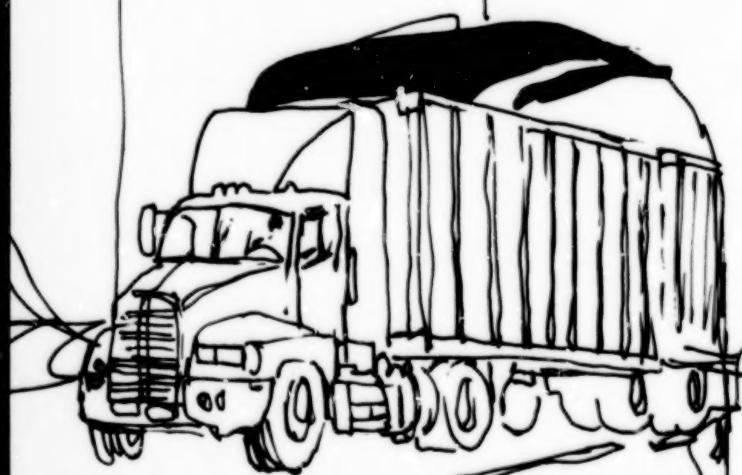
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Interstate Commerce Commission
1990 Annual Report



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Interstate Commerce Commission 1990 Annual Report



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LETTER OF TRANSMITTAL

April 3, 1991

To the Congress of the United States:

It is my pleasure to submit to you the 104th Annual Report of the Interstate Commerce Commission. The report generally embraces the fiscal year which ended September 30, 1990.

I joined the Commission and assumed the Chairmanship on February 12, 1990, approximately four and one half months into the fiscal year. I am pleased to report that my fellow Commissioners and I have put additional energy and resources into working closely with Congress, enhancing communications with our constituents, continuing to improve productivity and efficiency, and—through open voting conferences—allowing for greater legitimate participation by industry and constituent groups.

Since the substantive law is generally deregulatory and pro-competitive, practically all of the 964 decisions made during Fiscal Year 1990 were pro-market and deregulatory. Seventy of those decisions were made in open voting conferences.

During Fiscal Year 1990, the ICC held twenty-three open voting conferences. We regularly schedule open voting conferences on the first and third Tuesday of each month, and most major cases are decided in open voting conference.

The ICC held public forums on two issues of ongoing concern—the allocation of covered hopper cars and motor carrier ratemaking practices. I am pleased to note that Congressional members as well as industry representatives participated in those proceedings.

I am confident that we are moving in the right direction, though there is much work yet to be done. I look forward to working with the Congress to address the issues of motor carrier tariff filing and shipper undercharges as well as other transportation-related initiatives.

Edward J. Philbin
Chairman

THE COMMISSION

(As of September 30, 1990)

| | Appointed | Term Expires Dec. 31 |
|-------------------------------------|-----------|-------------------------|
| <i>Chairman</i> | | |
| Edward J. Philbin (R) California | 1990 | 1993 |
| <i>Vice Chairman</i> | | |
| Karen Borlaug Phillips (R) Virginia | 1988 | 1991 |
| <i>Commissioners</i> | | |
| J. J. Simmons III (D) Oklahoma | 1984 | 1990 |
| Paul H. Lamboley (D) Nevada | 1984 | 1989 |
| Edward M. Emmett (R) Texas | 1989 | 1992 |

During the Fiscal Year, President Bush appointed Edward J. Philbin (Republican of California) as a member and Chairman of the Commission replacing Heather J. Gradison whose term had expired. The Senate confirmed Mr. Philbin on February 9, 1990. President Bush appointed Edward M. Emmett (Republican of Texas) as a member of the Commission replacing Frederic N. Andre whose term had expired. The Senate confirmed Mr. Emmett on November 17, 1989.

On August 6, 1990, President Bush nominated Gail Clements McDonald (Democrat of Oklahoma) as a member of the Commission replacing Mr. Lamboley whose term had expired. The Senate confirmed Mrs. McDonald and she took the oath of office on October 5, 1990.



The Commissioners: *From the left*, Commissioner Paul H. Lamboley, Vice Chairman Karen Borlaug Phillips, Chairman Edward J. Philbin, Commissioner J. J. Simmons, III, and Commissioner Edward M. Emmett.

Functions and Responsibility

The Interstate Commerce Commission (ICC) is an independent Federal agency responsible for regulating interstate surface transportation within the United States. In carrying out its regulatory responsibilities, the ICC attempts to ensure that competitive, efficient, and safe transportation services are provided to meet the needs of shippers, receivers, and consumers.

The ICC today maintains jurisdiction over some 50,000 for-hire companies providing surface transportation in the U.S. Among these companies are railroads, trucking firms, bus lines, barge operations, one coal slurry pipeline, certain types of chemical pipelines, household goods movers, and freight forwarders of household goods.

The Interstate Commerce Commissioners are appointed by the President and confirmed by the Senate. The ICC is authorized to have five Commissioners each with a five-year term of office.

How the ICC Operates

The Commissioners supervise all of the ICC's activities, and delegate specific authority to the Commission's bureaus and offices.

As the executive head of the Commission, the Chairman coordinates and organizes the agency's work and acts as its representative in legislative matters and in relations with other governmental bodies. In addition, the Chairman generally is responsible for:

1. Overall Commission management and operations;
2. Formulation of plans and policies designed to ensure Commission effectiveness and the able administration of the Interstate Commerce Act;
3. Identification and resolution of major regulatory problems; and,
4. Development and utilization of effective, expert staff support for the

fulfillment of the Commission's many duties and functions.

The Vice Chairman represents the Commission and assumes the Chairman's duties during the Chairman's absence. Additionally, the Commission delegates several important functions to the Vice Chairman, including oversight of matters involving the admission, disbarment, or discipline of Interstate Commerce Commission Practitioners.

During fiscal year 1990, the Commission's activities were carried out through an organizational structure consisting of the Commission's bureaus and offices, as follows:

Office of Compliance and Consumer Assistance monitors the activities of ICC regulated companies, and rate bureaus to ensure compliance with the law administered by the ICC, and assists the public in the resolution of complaints against ICC-regulated companies.

Office of Congressional and Legislative Affairs develops and maintains cooperative relations with Congress; performs liaison activities with Congress to enhance understanding of Commission actions; responds to Congressional inquiries; and prepares testimony for presentation at Congressional hearings and written comments on proposed legislation for submission to Congress.

Office of Economics conducts economic and statistical analyses of the transportation industries and provides economic advice to the Commission. The Office determines and applies uniform accounting and reporting rules; reviews various financial reports; analyzes cost and financial evidence submitted by parties in cases before the Commission; compiles and publishes transportation statistics and cost studies; and conducts audits of pertinent records of transportation firms.

Office of External Affairs directs the intergovernmental, State and local

government, constituent, public, industry, and media affairs for the Commission.

Office of the General Counsel renders legal opinions to the Commission, and defends Commission decisions challenged in court.

Office of Hearings is staffed by Administrative Law Judges and conducts various hearings as directed by the Commission.

Office of Human Relations manages the Commission's program to provide equal employment opportunity for all employees and applicants, and provides training in the area of human relations.

Office of Inspector General conducts independent internal audits and investigations of the Commission's operations.

Office of the Managing Director manages the Commission's day-to-day operations. This includes budget, personnel, administrative services, and systems development.

Office of Proceedings processes Commission cases pertaining to operating rights, financial matters, mergers, rates, abandonments, and competitive practices.

Office of Public Assistance (Special Counsel) functions as a clearing house for resolution of small-business problems related to surface transportation regulation; advises the Commission on the nature and status of such problems; contributes to the public interest record in Commission cases; and assists individuals, consumer groups, small communities, small shippers, as well as transportation and public utility commission officials participating in those cases.

Office of the Secretary serves as the Commission's documentation center and clerk of the Commission. The Office is responsible for record keeping and the issuance of the Commission's decisions and other legal documents. The Office also administers the examination program for non-attorney practitioners and is involved in the acceptance of filings and the assignment of proceedings to the Commission's Bureau and Offices.

Bureau of Traffic monitors tariff publication, filing, and interpretation, and suspends any unreasonable or unlawful tariffs before they become effective.

FISCAL YEAR 1990 IN REVIEW

The Year in Review is a list of significant actions taken by the Commission during fiscal year 1990. These items are discussed in more detail in the subject chapters of the Annual Report.

1989

OCTOBER

4 Commission grants Blackstone Capital Partners L.P. exemption from prior regulatory approval for the acquisition and control of CNW Corporation and its carrier subsidiaries, the Chicago and North Western Transportation Company, Western Railroad Properties, Inc., and Midwestern Railroad Properties, Inc., subject to standard labor protective conditions.

6 Commission adopts final rules to ensure continued compliance with the statutory cap level for the movement of recyclable materials by railroads.

16 Commission lifts stay and allows electronic filing of rail tariffs; will further consider viability of electronic tariff filing for all other ICC regulated carriers.

NOVEMBER

17 Commission finds Florida East Coast Railway and Norfolk Southern Corporation to be revenue adequate for 1988.

19 Commission submits its *Disabled Veterans Affirmative Action Plan* for Fiscal 1990 to Office of Personnel Management.

27 Commission exempts from regulation under the Interstate Commerce Act independent motor carrier pickup and delivery performed immediately before or after a trailer-on-flatcar/container-on-flatcar movement.

DECEMBER

14 Commission exempts from regulation under the Interstate Commerce Act the transportation by rail of certain miscellaneous manufactured commodities.

29 Commission revises the general licensing form used to apply for operating authority for motor and water carriers, property brokers, and household goods freight forwarders.

1990

JANUARY

8 Commission issues staff study providing current overview of the motor carrier industry.

Commission adopts interim rule permitting motor carriers of property to file tariffs on three working days' notice in response to increased fuel costs.

11 Commission announces continuing implementation of rules prohibiting discrimination on the basis of handicap.

Commission announces its intent to review uniform rail costing system.

FEBRUARY

5 Commission announces its policy and seeks public comment on conversion of railroad corridors to trails.

15 Commission issues service order authorizing The New York, Susquehanna and Western Railway Company, the Lackawanna Valley Railroad Corporation, and the North Shore Railroad Company to operate over certain track of the Delaware and Hudson Railway Company.

21 Commission announces its intent to investigate motor carrier rate bureau issues.

26 Commission announces end to interim rule allowing property motor carrier tariff filings on three working days' notice in response to increased fuel costs.

MARCH

1 Commission vacates service order authorizing various railroads to operate over Delaware & Hudson Railway Company track as Delaware & Hudson Trustee resumes service.

12 Commission announces oral hearing in Montana on Burlington Northern abandonment proposal.

19 Commission decides not to delay Pittsburgh & Lake Erie Railroad Company sale and imposes conditions requiring buyer's compliance with certain employee protective conditions.

29 Commission proposes to revise its environmental rules to refine, clarify, and update its environmental review process.

APRIL

2 Commission issues report requested by the Senate Appropriations Committee on conversion of rail corridors to trails.

Commission issues a notice of proposed rulemaking requesting comments on a proposal by the Association of American Railroads to exempt from regulation the transportation by railroad of certain lumber, plywood, and treated wood products.

6 Commission begins investigation of Guilford Transportation Industries relative to compliance with employee-protective conditions mandated by law and by a prior Commission order.

26 Commission adopts final rule that permits motor common carriers of household goods to limit their liability for loss of or damage to articles of extraordinary value.

MAY

4 Commission updates staff report on trends in rail rates since passage of Staggers Rail Act. The study shows that the average, inflation-adjusted rate level has fallen 22 percent since the Staggers Rail Act. Data for 1987-1988 indicate overall rates were virtually unchanged during that period.

15 Commission modifies its licensing policy to exclude hazardous materials from new motor carrier operating

authorities in the absence of specific requests and evidence meeting the statutory criteria.

22 Commission announces it has finalized a new licensing application used to apply for all non-rail interstate surface transportation authority.

JUNE

5 In the wake of a petition for bankruptcy filed by Greyhound Bus Lines on June 4, 1990, Commission announces it will monitor the company's operations, participate in bankruptcy proceedings, and ensure that the company, a self-insurer under Commission regulations, maintains adequate insurance coverage.

21 Commission announces procedural schedule for consideration of Canadian Pacific's application to purchase Delaware & Hudson Railway Company.

29 Commission allows railroads to cancel participation in Railroad Cost Adjustment Factor tariffs.

JULY

12 Commission begins a consolidated fact-finding proceeding to review motor carrier ratemaking, rate bureau activities, discounting, and related issues.

26 Commission announces oral hearing in Michigan on Central Michigan Railway abandonment proposal.

27 Commission institutes proceeding to study Nation's grain car supply and schedules public conference.

AUGUST

7 Commission issues final 1988 railroad revenue adequacy findings.

14 Commission increases frequency of diesel fuel price survey to three times per week.

17 Commission approves Conrail acquisition of Monongahela Railway Company.

21 Commission reinstitutes interim rule permitting motor carriers to file fuel-related tariff increases on three-days' short notice filing and later reduces the notice period to one day.

Commission approves Canadian National Railway Company's lease of Chicago's Railport intermodal facility subject to standard labor protective conditions.

SEPTEMBER

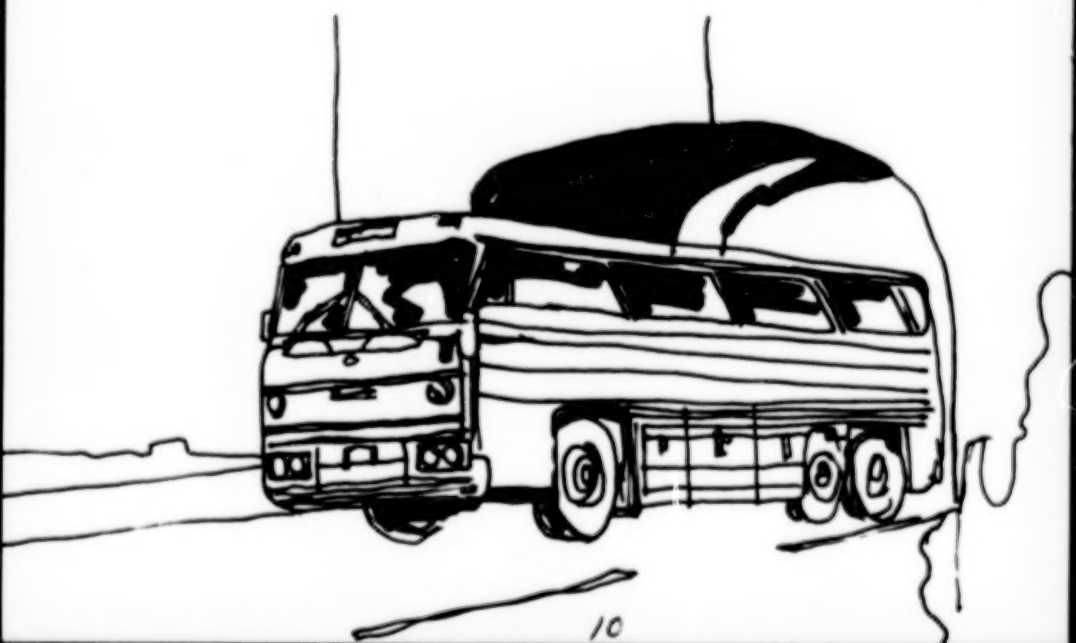
6 Commission announces availability of 1989 Waybill Sample.

10 Commission requests public comment on petition to prohibit smoking on buses.

12 Commission eliminates expiration date requirement in motor carrier fuel-related tariff increases until further notice.

18 Commission holds grain car supply public conference.

28 Commission terminates rulemaking proceeding which had proposed shifting initial responsibility for review of depreciation studies on railroad property from the Commission to private accounting firms.



ADMINISTRATION

Organization and Management

Several changes were implemented in the organization and management of the Commission this year. The Office of Transportation Analysis and the Bureau of Accounts were consolidated to form the Office of Economics. The concentration of technical support in a single office will allow better coordination among the related disciplines of costing, economics, and finance that form the basis of the work product of the new Office.

Two new offices were established from the former Office of Government and Public Affairs. The Office of External Affairs was established to facilitate communication with industry, States, associations, Federal agencies, the general public, and the media; and to disseminate information on the Commission's activities and agenda to interested parties. The new Office of Congressional and Legislative Affairs provides increased emphasis on congressional and legislative concerns and inquiries and prepares comments and testimony for hearings.

The Commission created an Executive Secretariat reporting to the Managing Director. The Executive Secretariat has the responsibility for correspondence control.

Finally, the Commission assigned to the Office of the Secretary new responsibilities concerning case assignment and tracking in order to expedite the flow of work throughout the Commission.

Office of Inspector General

The Office of Inspector General established and advertised a Complaint Hot Line. Fourteen complaints were received, which led to five of the seven investigations initiated during the year. The Office also initiated eight audits that were ongoing or completed at the close of the fiscal year.

The Inspector General provided training to Commission management

on biennial vulnerability assessments and on internal controls. This training established the basis for future audit cycles and promoted interaction between the Inspector General and Commission management.

The Inspector General provided semi-annual reports on its activities to the Chairman, Commissioners, and Congressional Oversight Committees.

Office of Public Assistance

The Commission's Office of Public Assistance responded to more than 22,500 inquiries regarding matters under the Commission's jurisdiction. The Office provided advice and assistance to numerous parties involved in rail abandonment cases and other Commission proceedings, participated in three oral hearings pertaining to railroad abandonment cases, and participated in five public hearings regarding Guilford Transportation Industries' labor protection issues.

The Office revised one booklet on rail abandonment proceedings and procedures, published three informational bulletins on motor carrier matters, and updated the Commission's listing of minority and female-owned motor carriers.

Human Relations

The Office of Human Relations worked to enlarge the scope of its mandate to enforce statutes guaranteeing the civil rights of all applicants and employees by looking at morale and related working conditions in clearly defined sub-units at ICC Headquarters. The Office sought to improve relations among workers, supervisors and top management, thereby increasing productivity and heading off costly and disruptive complaints. Meetings with individuals and groups of employees and their supervisors assisted the Agency's mission by exploring communication problems within targeted offices.

The Office undertook a long-term training effort designed to explore the "Attitudes and Stereotypes" which impede the progress of workers from reaching their full potential in the work force. As part of this effort the Office conducted 90-minute workshops for all Headquarters managers and supervisors, as well as the personnel in most of the larger regional and field offices. Although this training focused primarily on women's issues, other relevant areas such as race and disability were also discussed.

Commission Budget

The Commission's fiscal year 1992 budget was developed and submitted concurrently to the Office of Management and Budget and the Congress in August 1990. The budget reflected a status quo staffing level to provide continuity of regulatory functions in the absence of the passage of legislation further deregulating the motor carrier industry.

Fiscal Year 1990 Appropriations

Commission funding for fiscal year 1990 was included in the Department of Transportation and Related Agencies Appropriations Act, 1990,¹ approved November 21, 1989, which authorized the following appropriations:

- *Salaries and Expenses:* For necessary expenses of the Commission, including services as authorized by 5 U.S.C. 3109, and not to exceed \$1,500 for official reception and representation expenses, \$44,450,000: Provided, That joint board members and cooperating State commissioners may use Government transportation requests when traveling in connection with their official duties as such.

- *Directed Rail Service:* No funds provided in the Appropriations Act were to be available for the execution of programs the obligation for which could reasonably be expected to exceed \$475,000 for directed rail service authorized under 49 U.S.C. 11125 or any other legislation.

The 1990 Appropriation was reduced to \$44,205,000 due to a \$245,000 first quarter Gramm-Rudman-Hollings sequestration.

Salaries and Expenses Appropriation

On March 14, 1990, Chairman Edward J. Philbin appeared before the Subcommittee on Transportation of the House Committee on Appropriations to testify on the Commission's fiscal year 1991 budget request. The Chairman supported the request to the Subcommittee on Transportation of the Senate Committee on Appropriations by responding on June 25, 1990, to a series of written questions in lieu of a hearing.

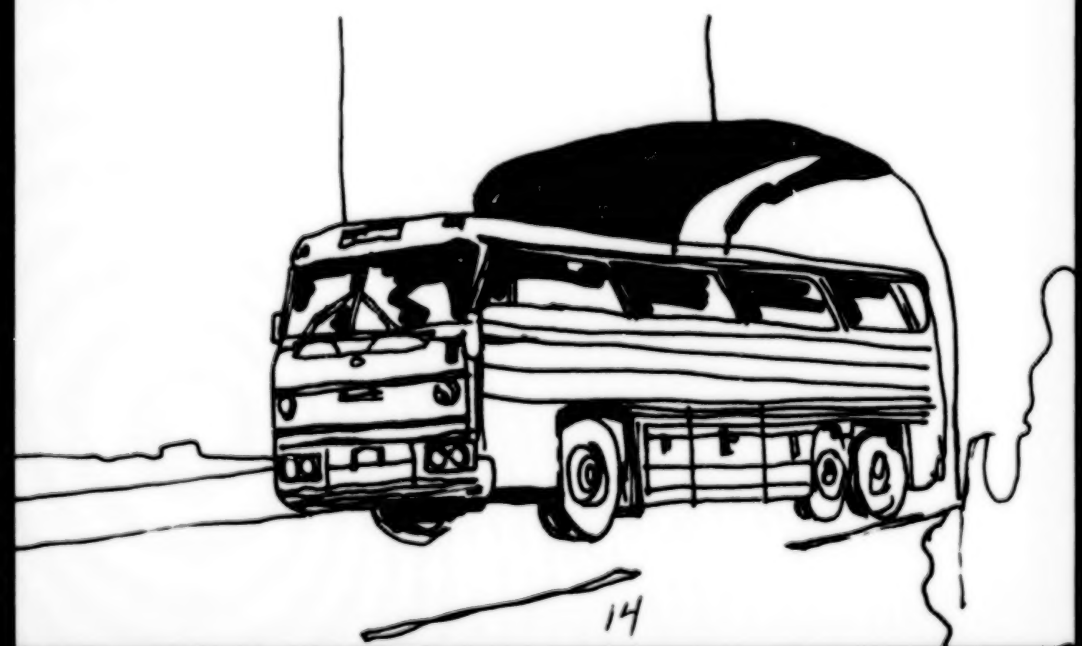
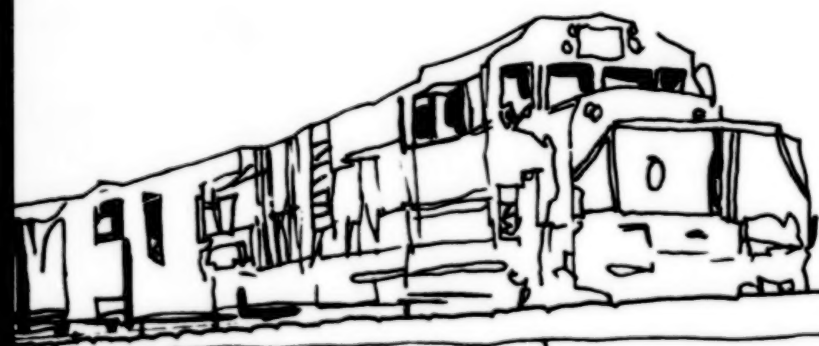
Payments for Directed Rail Service Appropriation

The last instance of subsidized directed rail service occurred between October 5, 1979, and March 23, 1980, when the Kansas City Terminal Railway Company provided service over the lines of the Chicago, Rock Island, and Pacific Railway Company. The Congress last appropriated funds for this directed service in a fiscal year 1982 supplemental appropriation.

Since no new, subsidized directed rail service is anticipated, no funds were requested for fiscal year 1991.

¹ Public Law 101-164.

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LEGISLATION

Hearings and Comments on Legislation

Negotiated Rates in the Motor Carrier Industry. On November 1, 1989, the Commission provided written views on H.R. 3243, a Bill to Amend Title 49, United States Code, Regarding the Overpayments or Undercharges on Shipments via Motor Common Carriers of Property and Nonhousehold Goods Freight Forwarders, and for other purposes. The legislation was introduced on September 12, 1989, and was referred to the House Committee on Public Works and Transportation. It would have clarified the fact that the ICC had primary jurisdiction to determine whether motor carrier and freight forwarder solicitation and billing practices were unreasonable, and therefore unlawful, under the Interstate Commerce Act.

Hearings on the legislation were not scheduled until after the June 21, 1990, decision of the U.S. Supreme Court in *Maislin Industries, U.S. Inc. v. Primary Steel, Inc.*, 110 Sup. Ct. 884 (1990). That decision struck down the Commission's policy of relieving shippers of the obligation to pay filed tariff rates where carriers had failed to file tariffs reflecting the lower rates that had been negotiated. As a result of the Supreme Court's decision, Commission and public attention was focused on a legislative remedy to the problem. The Commission presented testimony on July 17, 1990, at a hearing held by the Senate Commerce, Science, and Transportation Committee's Subcommittee on Surface Transportation and again on July 19, 1990, before the House Committee on Public Works and Transportation, Subcommittee on Surface Transportation. The Commission supported the need for legislation and offered suggestions as to how the bill could more clearly give the Commission the authority to determine that collection of tariff rates would be unlawful, where the

Commission finds that a carrier has engaged in an unreasonable practice by seeking to collect rates in addition to those originally billed and collected.

S. 2933, the Negotiated Rates Equity Act of 1990, was introduced on July 27, 1990, and was reported favorably by the Senate Commerce Committee on July 31, 1990. The Report to accompany the Senate bill (Senate Report 101-448) was filed August 30, 1990. No action by the full Senate was taken on S. 2933. With exception of the hearing at which the Commission testified, no action was taken on H.R. 3242.

Backhauling of Food and Refuse. The Commission testified on November 8, 1989, before the Subcommittee on Transportation and Hazardous Materials of the House Committee on Energy and Commerce concerning H.R. 3520, the Hazardous Materials Transportation Uniform Safety Amendments Act. A provision of that bill would require the Secretary of Transportation to establish regulations isolating the transportation of hazardous materials, solid waste, and certain other commodities. The bill would prohibit loading of food, drugs, cosmetics, and related products in any vehicle or rail car used to transport the types of hazardous material, solid waste, or other commodities identified by the Secretary. H.R. 3520 was reported by both the House Energy and Commerce Committee and the House Public Works and Transportation Committee. In its testimony, the Commission presented the results of a study which confirmed that garbage backhauling was practiced in the industry. The Commission found the legislation to be a commendable effort to address the problem.

Certain provisions of H.R. 3520, that will enhance the safe transportation of hazardous materials by rail and aid in the prosecution of violations of Federal hazardous materials regulations, were included in a similar Senate

bill, S. 2936, which became Public Law 101-615 on November 16, 1990. However, that legislation did not include the provisions dealing with the practice of garbage backhauling. The backhauling provisions became law, however, when they were incorporated in legislation that had originated in the House Public Works and Transportation Committee.¹

The Commission submitted written testimony to the Senate Commerce Committee, Surface Transportation Subcommittee for its hearing held March 1, 1990, on two bills then under consideration: S. 1751, the Safe Transportation of Food Act and S. 1904, the Clean Food Transportation Act. In its testimony, the Commission restated the results of its field study and expressed support for both bills. On April 3, 1990, the Commerce Committee reported S. 2393, which was similar to H.R. 3386. A compromise version of H.R. 3386 was approved by Congress and became Public Law 101-500 on November 3, 1990.

Leveraged Buyouts (LBO's) in the Rail Industry. On June 22, 1989, the Commission testified before the Senate Commerce Committee on proposed legislation relating to the sale, purchase, or acquisition of Class I railroads by noncarriers. Although the Commission took no position on the legislation, as a whole, the Commission did perceive problems with the House and Senate bills then pending. No hearings were held in the House. A provision giving the ICC authority to review these acquisitions was incorporated in H.R.

2364, the Amtrak Reauthorization and Improvement Act of 1989, which was passed in the House on May 9, 1990, and in the Senate on May 10, 1990. The President vetoed the legislation on May 24, 1990, with the message that the rail LBO provision was an unnecessary new regulatory review requirement. On June 6, 1990, the House passed the Motion to Override the veto but on June 12, 1990, the Senate sustained the veto. A new bill, H.R. 5075, was passed by both Houses on June 25, 1990, and became Public Law 101-322 on July 6, 1990. It is identical to the original version of H.R. 2364 except that it does not contain the rail LBO provision.

Railroad Reorganization Public Interest Protection Act. On October 6, 1989, the Commission testified before the Senate Committee on the Judiciary in support of S. 1631, the Railroad Reorganization Public Interest Protection Act, introduced on September 14, 1989. That legislation would have amended the bankruptcy code to overrule a Federal District Court decision which held that public interest considerations could not be taken into account in determining whether priming loans could be made to bankrupt rail carriers, specifically, to the bankrupt Chicago, Missouri and Western Railway Company (CMW).

The Commission took the position that the District Court had erred in declining to consider the public interest in the CMW proceeding, and that the proposed legislation would clarify Congress' intent that the requirement of Section 77 of the former Bankruptcy Code, i.e., that the effect of a transaction on the public interest must be considered, should not have been deleted in the 1978 recodification of the bankruptcy laws.

The bill was not reported out of the Judiciary Committee during the 101st Congress. Similar legislation (H.R. 3324) was introduced in the House and referred

¹The Commission had testified in Fiscal 1989 before this Committee about the existence of the backhauling problem and H.R. 3386 was introduced on October 2, 1989. This bill was approved by the Public Works and Transportation Committee on November 17, 1989. It was then referred to the House Energy and Commerce Committee which favorably reported the bill on March 13, 1990, with an amendment similar to the backhaul provision of H.R. 3520. The measure was passed by the House on March 27, 1990, and referred to the Senate Committee on Commerce, Science and Transportation.

to the House Committee on the Judiciary, which took no action on the bill.

Other Legislative Proposals

Grain Car and Abandonment Legislation. Companion bills, S. 3054 and H.R. 5737, the Improved Rural Railroad and Grain Car Service Act were introduced late in the 101st Congress. The legislation would have required a number of changes in the Commission's railroad abandonment procedures. It also would have required Commission regulations to encourage the purchase, acquisition and use of freight cars. The Commission was not asked to testify on this legislation and no hearings or other action was taken on it before adjournment.

Intrastate Trucking. The Safe and Competitive Trucking Act of 1990 (H.R. 4261) was introduced in the House on March 14, 1990. It contained many limitations on a state's ability to impose economic regulations on interstate motor carriers operating within states. On March 29, 1990, the Subcommittee on Commerce, Consumer, and Monetary Affairs of the House Committee on Government Operations held a hearing on the cost to consumers of continued state motor carrier regulation and issued House Report 101-813 on the subject. The Commission was not asked to testify at the hearing. No further action was taken on the bill or the issue.

Interlocking Directorates. Legislation to amend the Clayton Act regarding interlocking directorates and officers, H.R. 29 and S. 994, was reported from both the House and Senate Judiciary Committees. It contained a one-line provision to repeal Section 10 of the Clayton Act (15 U.S.C. 20). Common carriers would no longer be required to make filings with the Commission in cases where vertical interlocks exist between common carriers and their sup-

pliers or customers. The Commission was not asked to testify on this legislation. In the last days of the 101st Congress the legislation was passed and became Public Law 101-588 on November 16, 1990.

Delaware & Hudson/Conrail Trackage Rights. Companion bills, S. 2210 and H.R. 4139, the Competitive Northeastern Rail Freight Service Act of 1990, were introduced on February 28, 1990. The legislation would have required Conrail to grant the Delaware and Hudson Railroad (or a successful bidder to purchase the railroad) trackage rights over a 40-mile route near Hagerstown, Maryland. The Commission would have been required to decide the amount of compensation if the parties could negotiate an agreement. The Commission was not asked to testify on this legislation and no further action on it was taken.

ICC Sunset Proposal. H.R. 2211, the Interstate Commerce Commission Sunset Act of 1989, was introduced on May 3, 1989, and referred to the House Committees on Public Works and Transportation and Energy and Commerce. No hearings were held on the proposal in fiscal year 1990.

Reports To Congress

As required by law, the Commission must report to Congress by December 31 of every year that the requirements of the Federal Managers' Financial Integrity Act of 1982 have been met, or explain why total compliance has not been fully achieved.

On December 19, 1989, the Commission stated in a letter to Congress that the ICC's internal control and financial systems, taken as a whole, provide reasonable assurances that the Commission has reached the objectives of the Act.



RAILROADS

Financial Condition

A comparison of the operating results of Class I line-haul railroads¹ for fiscal year 1990, with fiscal year 1989, reveals that net railway operating income rose 14.6 percent to more than \$2.6 billion as the rail industry was able to control operating expenses in a period of traffic growth and inflationary pressure. However, ordinary income during this period fell 10 percent to almost \$2.3 billion due to a decline in non-carrier income and increased interest expense. Operating revenues and revenue ton miles rose by 1 percent and 2.6 percent, respectively. These earnings data exclude large accounting adjustments (special charges) by eight railroads to record major restructuring efforts, to eliminate excess capacity and increase labor productivity, and to record costs and claims expected to result from litigation and negotiated settlements.

During fiscal year 1990, Class I line-haul rail employment declined 4.8 percent to a monthly average of 219,000 employees, compared to a monthly average of about 230,000 employees during fiscal year 1989. This reduction was larger than the 3.5 percent decrease in average monthly employment levels between fiscal year 1989 and fiscal year 1988. Between passage of the Staggers Rail Act of 1980 and fiscal year 1990, rail industry employment levels fell about 52 percent.²

Securities

The issuance of securities and the assumption of liabilities are exempt from

the prior approval requirements of 49 U.S.C. 11301 under the Commission's class exemption.³ Class II and III carriers are relieved of any filing requirements.⁴ Class I carriers are required to file a notice of exemption, and the regulations provide for Commission investigation upon the receipt of protests.⁵

The Commission approved⁶ the guarantee of \$1.06 billion in obligations and the issuance of \$310 million in securities for Blackstone Capital Partners L.P.'s acquisition of control of Chicago & North Western Corporation and its rail subsidiaries.⁷ Although the transaction was highly leveraged, the Commission determined that the exemption criteria were met. Also, a quarterly reporting condition was imposed upon the parties to permit monitoring their progress in achieving the financial goals described in the notice of exemption.

The class exemption does not apply to transactions directly related to formal acquisition applications under 49 U.S.C. 10901 or 11343-11345. Thus, the protest by Consolidated Rail Corporation (Conrail) to the notice of exemption for acquisition to control the Monongahela Railway Company was dismissed because the proposed assumption of an obligation was related to a prospective formal application.⁸ When Conrail filed that application, the Commission approved Conrail's assumption of obligations of the Pitts-

¹ 49 CFR 1175.

² Also free of any filing requirements are parties acquiring lines pursuant to 49 U.S.C. 10905 offers of financial assistance to avoid abandonment and discontinuance and carriers, regardless of size, issuing equipment trust certificates. 49 CFR 1175.1.

³ 49 CFR 1175.1(b) and 1175.2.

⁴ *Blackstone Cap. Partners—Cont. Exempt.—CNW Corp. Et Al.*, 5 I.C.C.2d 1015 (1989).

⁵ Chicago & North Western Transportation Company, Western Railroad Properties, Inc., and Midwestern Rail Properties, Inc.

⁶ Finance Docket No. 31515, *Consolidated Rail Corporation—Notice of Exemption (Securities)* (not printed), served December 29, 1989.

¹ Railroad companies having adjusted annual operating revenues of \$50,000,000 or more for three consecutive years. Revenues are adjusted annually to eliminate the effects of inflation from the classification process.

² Financial data are obtained from the *Quarterly Report of Revenues, Expenses and Income—Railroads*. Employment figures are from *Form C: Monthly Report of Employees of Class I Railroads*.

burgh and Lake Erie Railroad and CSX Transportation, Inc.⁹

Reorganizations

The only active railroad reorganization still pending under Section 77 of the Bankruptcy Act¹⁰ is that of the Morristown and Erie Railroad Company.¹¹ The Commission decided three requests to set the maximum limits of compensation for services rendered by its trustees and counsel.¹²

The Chicago South Shore and South Bend Railroad (CSSSB) requested Commission approval to discontinue its passenger operations as a result of its bankruptcy petition under Chapter 11 of the Bankruptcy Code. The Commission instituted an investigation, found that the financial losses to CSSSB from unresolved subsidy problems with local commuter authorities warranted discontinuance, but encouraged the parties to negotiate an alternative to cessation of service.¹³ The parties did so, and two new Class II railroads were created to acquire the assets of CSSSB. Chicago SouthShore and South Bend Railroad, Co. (South-

Shore) now provides freight service, and Northern Indiana Commuter Transportation District (NICTD) provides passenger operations under trackage rights over SouthShore. NICTD also acquired an option to purchase the line.

The Canadian Pacific Limited (CP) and its subsidiary, D&H Corporation (D&H Corp.), filed an application under 11 U.S.C. 1172(a) and 49 U.S.C. 11343-11345, to acquire substantially all of the assets, properties and business of the bankrupt Delaware and Hudson Railway Company (D&H), including D&H's controlling interest in five railroads for which related petitions for exemption were filed.¹⁴

In order to consider the proposal, the Commission revoked in part the class exemption for trackage rights agreements so the assignment of D&H's trackage rights could be considered with the application.¹⁵ The matter was pending at the close of the fiscal year.

On August 1, 1990, D&H Corp. and CP began providing service, succeeding the New York, Susquehanna and Western Railway Corporation (NYS&W) which had performed service over D&H lines pursuant to Commission issued service orders since June 1988, when D&H filed for bankruptcy until January 18, 1991.¹⁶ Following cessation of service by NYS&W, the D&H Trustee provided service over the D&H for several months prior to institution of service by CP and D&H Corp.

⁹Finance Docket No. 31630 (Sub-No. 1), *Conrail—Assumption of Obligations and Liabilities*; Finance Docket No. 31630 (Sub-No. 2), *Conrail—Securities Purchase—Pittsburgh and Lake Erie Railroad Company*; and Finance Docket No. 31630 (Sub-No. 3), *Conrail—Securities Purchase—CSX Transportation, Inc.* (not printed), served August 16, 1990.

¹⁰11 U.S.C. 206.

¹¹Finance Docket No. 28691 (Sub-No. 4), *Morristown and Erie Railroad Company—Reorganization Plans* (not printed), served May 26, 1982. The matter is pending before the United States District Court for the District of New Jersey in No. B-77-03078.

¹²Finance Docket No. 28691 (Sub-No. 5), *et al., Morristown and Erie Railroad Company—Reorganization (Compensation—John L. Ard, Trustee)* (not printed), served December 19, 1989.

¹³Finance Docket No. 31348, *Chicago South Shore and South Bend Railroad—Discontinuance of Passenger Trains under 49 U.S.C. 10908* (not printed), served October 31, 1989, and November 23, 1989.

¹⁴Finance Docket No. 31700, *Canadian Pacific Limited, et al.—Purchase and Related Trackage Rights—Delaware & Hudson Railway Company*.

¹⁵*Id.* (not printed), served July 3, 1990.

¹⁶See, e.g., Service Order No. 1506, *The New York, Susquehanna and Western Railway Corporation Authorized to Operate Tracks of Delaware and Hudson Railway Company, Debtor* (Francis P. Dicello, Trustee) (not printed), served February 13, 1989; and Amendment No. 1 to Service Order No. 1510, *D&H Corporation/Canadian Pacific Limited Authorized to Operate Tracks of Delaware and Hudson Railway Company, Debtor* (Francis P. Dicello, Trustee) (not printed), served August 30, 1990.

Mergers, Consolidations, and Acquisitions

For the second year in a row, no major mergers or consolidations among rail carriers were proposed or pending before the Commission during fiscal year 1990.

The number of sales of line segments to railroads increased slightly. Several acquisitions of lines by railroads were the subject of labor-related controversies and are discussed in the "Labor Issues" section of this chapter. Transactions involving two or more Class I railroads are "major" transactions, and are subject to the detailed decisional criteria of 49 U.S.C. 11344(b). Other transactions are classified as either "significant" or "minor."¹⁷

The proposed transfer of a Soo Line Railroad Company line between Kansas City, Missouri, and Chicago, Illinois, to Rio Grande Industries and related trackage rights, was found to be a "significant" transaction, and it generated considerable opposition. Although the Commission approved the transaction, it was not consummated after negotiations among the involved railroads failed.¹⁸ The Commission approved 10 acquisitions, which were found to be "minor" transactions under the consolidation regulations.

Perhaps the most significant petition for exemption involved the acquisition of control by Blackstone Capital Partners L.P. of Chicago & North Western Corporation and its rail subsidiaries.¹⁹ The exemption was granted, and requests to revoke the related notice of exemption to issue securities under the securities class exemption were denied.

Fifteen notices for the acquisition of nonconnecting carriers were filed and approved. They were filed under the class exemption for acquisition or continuance in control of a nonconnecting carrier which applies where (1) the railroads would not connect with each other or any railroads in their corporate family, (2) the transaction is not part of a series of anticipated transactions that would connect the railroads, and (3) the transaction does not involve a Class I carrier.²⁰

One of the fifteen notices was protested by the carrier being acquired in a hostile takeover. Arguments that the parent company of the carrier was holding other corporations with motor carrier authority prohibited use of the class exemption were rejected. The Commission found not only that the motor authority had been cancelled, but also that the motor operations were too limited and remote to have an impact on the acquired carrier.²¹

Rail common control requests remained at a low level with only two being filed. In one case, the Illinois Central Railroad Company (ICR) sought to reacquire its 47 percent stock interest in the Peoria and Pekin Union Railway Company (P&PU), which had been placed in a voting trust pending Commission approval of the acquisition. The petition was dismissed for lack of jurisdiction because ICR's 47 percent interest would not constitute control of P&PU given the limitations imposed by the operating agreement.²² Two peti-

¹⁷ 49 CFR 1180.2(d)(2).

¹⁸ Finance Docket No. 31564, *Georgia Pacific Corporation and NM Acquisition Corp.—Acquisition of Control Exemption—Nonconnecting Railroads* (not printed), served December 7, 1989.

¹⁹ Finance Docket No. 31542, *Illinois Central Railroad Company—Reacquisition and Control Exemption—Peoria and Pekin Union Railway Company* (not printed), served December 29, 1989.

¹⁷ 49 CFR 1180.2 and 1180.4.

¹⁸ *Rio Grande Ind., Inc.—Pur. & Trac.—Soo Line R. Co.*, 6 I.C.C.2d 854 (1990).

¹⁹ *Blackstone Cap. Partners—Cont. Exempt.—CNW Corp. et al.*, 5 I.C.C.2d 1015 (1989).

tions for exemption were granted as well as nine notices of exemption under the Commission's class exemption.

Two formal applications to lease were approved. Canadian National Railway Company obtained the Railport intermodal facility in Chicago,²³ which will be operated by Chicago Rail Link.²⁴ Ashland Railway, Inc., obtained approval to lease and operate a 24.7-mile line in Ohio.²⁵ Additionally, five petitions for exemption from formal review of leases were granted.²⁶

Acquisitions of rail lines by noncarriers under the Commission's class exemption from 49 U.S.C. 10901²⁷ increased slightly this fiscal year. Forty-three transactions were approved compared with 42 for fiscal year 1989.²⁸ Three Class II railroads were created.

²³ Finance Docket No. 31387 (Sub-No. 1), *Canadian National Railway Company—Lease from Grand Trunk Western Railroad Company* (not printed), served July 24, 1990.

²⁴ Finance Docket No. 31387 (Sub-No. 2), *Chicago Rail Link—Operation Exemption—Canadian National Railway Company* (not printed), served December 27, 1989.

²⁵ Finance Docket No. 31664, *Ashland Railway, Inc.—Lease and Operation—CSX Transportation, Inc. Line Between Willard and Mansfield, OH* (not printed), served September 28, 1990.

²⁶ Finance Docket No. 31514, *Indiana Hi-Rail Corporation—Lease and Operation Exemption—Norfolk and Western Railway Company between Liberty Center, OH, and Woodburn, IN* (not printed), served October 18, 1989; Finance Docket No. 31526, *Laurinburg and Southern Railroad Company, et al.—Lease and Operation Exemption—Southern Railway Company* (not printed), served November 7, 1989; Finance Docket No. 31532, *Indiana Hi-Rail Corporation—Lease and Operation Exemption—Norfolk and Western Railway Company Line Between Douglas, OH, and Van Buren, IN* (not printed), served November 29, 1989; Finance Docket No. 31642, *Florida Central Railroad Company—Lease and Operation Exemption—CSX Transportation, Inc.* (not printed), served September 5, 1990; and Finance Docket No. 31646, *Mid Michigan Railroad Company, Inc.—Lease and Operation Exemption—Missouri Pacific Railroad Company* (not printed), served August 28, 1990.

²⁷ 49 CFR 1150, Subpart D.

²⁸ Further information is provided in the Short Line and Regional Railroads section *infra*.

The largest new system resulted from the Wheeling Acquisition Corporation purchase of 576 miles of track and 264 miles of incidental trackage rights.²⁹ Use of the exemption procedures continued to be affected by labor issues, which are discussed in the "Labor Issues" section of this chapter. Since the class exemption³⁰ became effective on February 17, 1986, 225 proposals to create new railroads have been published.

In a declaratory order requested by two railroads seeking to use the class exemption, the Commission held that neither would be required to assume the common carrier obligation of the other in the event either fails to provide the service over the same lines.³¹ One planned to provide freight service, and the other planned to provide passenger service. Subsequent to the ruling, both obtained exemptions to begin operations.³²

The class exemption for acquisitions and renewals of trackage rights exempts from formal review trackage rights based on written agreements that are not filed or sought in responsive applications in rail consolidation proceedings.³³ Use of this exemption substan-

²⁹ Finance Docket No. 31591, *Wheeling Acquisition Corporation—Acquisition and Operation Exemption—Lines of Norfolk & Western Railway Company* (not printed), served February 6, 1990.

³⁰ See *Class Exemption for Acquisition and Operation of Rail Lines under 49 U.S.C. 10901*, 1 I.C.C.2d 810 (1986).

³¹ Finance Docket No. 31577, *Chicago South Shore and South Bend Railroad Co. and The Northern Indiana Commuter Transportation District—Petition for Declaratory Order—Common Carrier Obligation* (not printed), served December 29, 1989.

³² Finance Docket No. 31575, *Chicago South Shore and South Bend Railroad Co.—Acquisition and Operation Exemption—Chicago South Shore and South Bend Railroad Co.* (not printed), served January 10, 1990 and Finance Docket No. 31576, *Northern Indiana Commuter Transportation District—Acquisition and Operation Exemption—Chicago South Shore and South Bend Railroad Co.* (not printed), served January 10, 1990.

³³ 49 CFR 1180.2(d)(7).

tially increased this year with 55 notices of exemption being published.³⁴ One was subsequently vacated at the carriers' request.³⁵

Four new operators were licensed during fiscal year 1990 by issuance of modified certificates of public convenience and necessity.³⁶ These modified certificates of public convenience and necessity are issued to operators of abandoned lines that have been acquired by state or local government entities. Under the modified certificate, an operator may terminate service merely by providing 60 days public notice without additional abandonment authority.

One line sale was approved this year under the Feeder Line Development Program, which is designed to prevent downgrading or abandonment of lines.³⁷ Under this program the Commission may force railroads to sell lines that they have identified for abandonment on the railroad's system diagram map or on which existing service is inadequate. The purchaser must pay the constitutional minimum price for the line and guarantee adequate service for at least three years.

³⁴In fiscal year 1989, the 35 notices of exemption were approved.

³⁵Finance Docket No. 31597, *North Carolina and Virginia Railway, Inc.—Lease and Operation Exemption—Southern Railway Company and Finance Docket No. 31598, North Carolina and Virginia Railway, Inc.—Trackage Rights Exemption—Norfolk and Western Railway Company and Southern Railway Company* (not printed), served March 15, 1990.

³⁶Finance Docket No. 30305 (Sub-No. 1), *Blue Mountain and Reading Railroad Company Modified Rail Certificate* (not printed), served June 13, 1990; Finance Docket No. 31618, *C&S Railroad Corporation Modified Rail Certificate* (not printed), served April 18, 1990; Finance Docket No. 31676, *Port of Tillamook Bay Modified Rail Certificate* (not printed), served June 4, 1990; and Finance Docket No. 31701 (Sub-No. 1), *Milford-Bennington Railroad Company, Inc., Modified Rail Certificate* (not printed), served August 8, 1990.

³⁷*Sandusky County, et al.—Feeder Line Appl.—Conrail*, 6 I.C.C.2d 568 (1990).

Labor Issues

Following an adverse judicial decision,³⁸ the Commission gave further consideration to two important labor proceedings.³⁹ The two consolidated cases involved awards of arbitration committees acting pursuant to the Commission's labor protective conditions. The committees set the terms for implementing the post-merger consolidation of locomotive dispatching functions in the case involving CSX Transportation, Inc., and of repair shops in the case involving the Norfolk and Western Railway, modifying certain terms of collective bargaining agreements (CBAs) to permit implementation. The Commission had affirmed the awards but the Court of Appeals for the District of Columbia Circuit reversed the Commission, ruling that the Commission did not have the power under 49 U.S.C. 11341(a) to override provisions of CBAs. The Supreme Court granted petitions filed by the railroads to review the D.C. Circuit's decision.⁴⁰

Following remand by the D.C. Circuit, the Commission reopened the proceedings and sought comments from the parties and the public on two issues that the D.C. Circuit declined to address: (1) whether the Commission had the power to modify CBAs in consolidations because of the mandatory binding arbitration in the labor protective conditions imposed pursuant to 49 U.S.C. 11347; and (2) whether Railway

³⁸*Brotherhood of Railway Carmen v. ICC*, 880 F.2d 562 (D.C. Cir. 1989).

³⁹Finance Docket No. 28905 (Sub-No. 22), *CSX Corporation—Control—Chessie System, Inc. and Seaboard Coast Line Industries, Inc.*, 4 I.C.C.2d 641 (1988) and Finance Docket No. 29430 (Sub-No. 20), *Norfolk Southern Corporation—Control—Norfolk and Western Railway Company and Southern Railway Company*, 4 I.C.C.2d 1080 (1988).

⁴⁰No. 89-1027, *Norfolk and Western Railway Company v. American Train Dispatchers Association*; and No. 89-1028, *CSX Transportation, Inc. v. Brotherhood of Railway Carmen*.

Labor Act (RLA) remedies are foreclosed by 49 U.S.C. Section 11341(a). The Commission issued an extensive decision reviewing the relationship between the Interstate Commerce Act and RLA in connection with the treatment of employees in mergers and consolidations over the past 50 years.⁴¹ The decision balanced the railroads' need to expect prompt consummation of ICC-approved transactions and the rights of employees to bargain collectively over their terms of employment. The Commission ruled that, in accord with the practice between 1940 and 1980 growing out of the Washington Job Protection Agreement, collective bargaining agreements could be modified under 49 U.S.C. 11347 and the protective conditions, but only with respect to those areas subject to modification in the 1940-80 period, generally the selection of work forces and the assignment of employees, with some qualifications, and only to the extent necessary to permit the carrying out of a merger or consolidation. Employees' contract rights are otherwise to be preserved and their traditional right to bargain over their pay, rules and working conditions is not to be undermined.

In light of this new approach, the Commission reversed and vacated the two arbitration awards under review in these cases. The Commission also ruled that it had authority under 49 U.S.C. 11341(a) to foreclose generally the resort to RLA remedies for modification or enforcement of CBAs.

In another labor matter, the Commission instituted an investigation in response to complaints from employees of the Springfield Terminal Railway Company regarding nonpayment of benefits under Commission-imposed labor protective conditions. The Com-

mission concluded that the railroads had failed satisfactorily to process and pay eligible claims.⁴² The Office of Hearings was assigned the task of establishing claims categories, and reasonable deadlines for the resolution of disputed claims. The Administrative Law Judge's report is currently before the Commission.

In a separate proceeding involving the same railroads, the Commission accepted review of the implementing agreement proposed by an arbitrator selected by the National Mediation Board.⁴³ At an open voting conference held on August 14, 1990, the Commission voted to affirm the implementing agreement. The Commission's written decision had not yet been issued at the end of the fiscal year.

During fiscal year 1990, the Commission also reviewed a number of arbitration awards concerning implementation of Commission-imposed labor protective conditions and, in one instance, implementation of a private agreement. These cases included a case remanded by the Court of Appeals following its determination that the Commission lacked jurisdiction to review an arbitral award.⁴⁴ The award had been rendered under the RLA pursuant to a Commission-approved private agreement between labor and management rather than under Commission-imposed protective conditions. The Commission vacated its prior decision but stated that it remained obliged to determine whether the protection afforded

⁴² Finance Docket No. 30965 (Sub-No. 2), *Delaware and Hudson Railway Company—Lease and Trackage Rights Exemption—Springfield Terminal Railway Company* (not printed), served July 24, 1990.

⁴³ Finance Docket No. 30965 (Sub-No. 1), *Delaware and Hudson Railway Co.—Lease and Trackage Rights Exemption—Springfield Terminal Railway Co.*

⁴⁴ *Brotherhood of Locomotive Engineers v. ICC*, 885 F.2d 446 (8th Cir. 1989).

⁴¹ *CSX Corp.—Control—Chessie and Seaboard C.L.I.*, 6 I.C.C.2d 715 (1990).

satisfies the minimum required by statute.⁴⁵ Subsequently, the *BN/Frisco* analysis, rejecting the "but for" standard which some arbitrators used to resolve the causation disputes over labor protective benefits was affirmed.⁴⁶ The Commission noted that the court in *BN/Frisco* did not focus on the impropriety of the standard itself.

The *Lace Curtain* standards for review of arbitration decisions were applied in several proceedings.⁴⁷ In *Lace Curtain*, the Commission asserted its authority to review the merits of decisions of arbitrators deciding claims concerning Commission-imposed, employee protective conditions. One arbitrator's approval of the abolishment of four union positions and transfer of their work to another location, where it would be performed by management,⁴⁸ was found not to be an egregious error, nor an impermissible departure from the *New York Dock*⁴⁹ conditions.

Allegations of improper computation of displacement allowances authorized under the *New York Dock* conditions were dismissed by the Commission as being essentially a factual matter within the arbitrator's special role in resolving disputes.⁵⁰ In two other cases the Com-

mission denied petitions to stay arbitration decisions after finding that two separate arbitrators had properly applied the labor protective conditions to the facts of the cases presented to them.⁵¹ In another instance, the Commission declined further review after an arbitrator clarified and affirmed his prior determination that employee furloughs were caused by a general decline in business and not as a result of Commission-approved transactions.⁵² The Commission declined to review an arbitration finding that a dismissed employee was eligible to receive a lump sum dismissal allowance under the *Oregon III*⁵³ labor protective conditions imposed in a related abandonment proceeding.

In a case with broad applicability,⁵⁴ the Commission overruled an earlier decision and clarified and explained the applicability of Commission labor protective conditions imposed in the sale (*New York Dock*) or lease (*Mendocino*)⁵⁵ of a rail line to another railroad. Transactions of these types, involving no ongoing relationship between buyer and seller and consequently no merging of their respective work forces, require different labor protective conditions from those imposed in consolidation, merger, and/or

⁴⁵Finance Docket No. 28583 (Sub-No. 24), *Burlington Northern, Inc.—Control and Merger—St. Louis-San Francisco Railway Company* (Petition for Review of Arbitral Award) (not printed), served October 25, 1989 (*BN/Frisco*).

⁴⁶Finance Docket No. 29720 (Sub-No. 1A), *Maine Central Railroad Company—Lease* (Arbitration Review) (not printed), served November 14, 1989.

⁴⁷*Chicago & North Western Tptn. Co.—Abandonment*, 3 I.C.C.2d 729 (1987), aff'd sub nom. *International Bd'd. of Elec. Workers v. ICC*, 862 F.2d 330 (D.C. Cir. 1988).

⁴⁸Finance Docket No. 28905 (Sub-No. 23), *CSX Corporation—Control—Chessie System, Inc. and Seaboard Coast Line Industries* (Arbitration Review) (not printed), served October 3, 1989.

⁴⁹*New York Dock Ry.—Control—Brooklyn Eastern District Terminal*, 360 I.C.C. 60 (1979).

⁵⁰Finance Docket No. 28905 (Sub-No. 24), *American Train Dispatchers Association v. CSX Transportation, Inc.* (not printed), served June 25, 1990.

⁵¹Finance Docket No. 31063, *Midsouth Corporation—Control Exemption—Midsouth Rail Corporation and Midlouisiana Rail Corporation* (not printed), served July 20, 1990, and Finance Docket No. 31464 et al., *Indiana Railroad Company—Lease and Operation Exemption—Norfolk and Western Railway Company* (not printed), served July 30, 1990.

⁵²Finance Docket No. 30000 (Sub-No. 47), *Union Pacific Corporation, Pacific Rail System, Inc., and Union Pacific Railroad Company—Control—Missouri Pacific Corporation and Missouri Pacific Railroad Company* (Arbitration Review) (not printed), served March 30, 1990.

⁵³*Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

⁵⁴*Wilmington Term. R., Inc.—Pur. & Lease—CSX Transp., Inc.*, 6 I.C.C.2d 799 (1990) (*Wilmington Terminal*).

⁵⁵*Mendocino Coast Ry., Inc.—Lease and Operate*, 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1980).

control transactions. The Commission concluded that in line sales the seller must: (1) provide full New York Dock protection to its affected employees; (2) not penalize any employee for failure to accept a position offered by the buyer; and (3) enter into an implementing agreement(s) with affected employees prior to consummating the sale. The buyer is obligated to provide full New York Dock protection to its own employees and must arrive at an implementing agreement(s) with its employees prior to consummation if the transaction could have an adverse impact on them. Absent a contractual provision to the contrary, the buyer is under no obligation to employees of the seller other than to inform them fully of the prospects for, and terms and conditions of, employment with the buyer. These conclusions are equally applicable to lease transactions (with the seller's obligations applicable to the lessor and the buyer's obligations applicable to the lessee) except that implementing agreements may be reached subsequent to consummation. The Commission specifically overruled its decision in *Brandywine*⁵⁶ to the extent it required negotiation of a single "umbrella" implementing agreement covering the seller and buyer, and the employees of both.

In *Wilmington Terminal*, the Commission also declined the carrier's request to invoke the preemptive authority of 49 U.S.C. 11341(a), determining that the proposed transaction neither contemplated nor required changes in existing collective bargaining agreements. It further ruled that collective bargaining agreements are not transportable and that the buyer has no statutory responsibility to offer preferential hiring to seller's employees. Finally, the agency declined to exercise

its discretion to require the buyer to extend a preferential hiring requirement to employees of the seller.⁵⁷

A non-union Canadian employee's complaint based on labor protective conditions imposed in the *Northern Lines*⁵⁸ merger was dismissed for lack of jurisdiction based on principles of extraterritoriality.⁵⁹ However, consistent with its jurisdiction over transactions involving transportation in the United States, the Commission, in authorizing the lease of a rail facility located in the United States to a Canadian carrier, subjected the Canadian carrier to the

⁵⁷ Each of the following proceedings addressed and resolved issues involving labor protection raised in *Wilmington Terminal* in a manner consistent with *Waf* decision: Finance Docket No. 31494, *Intermountain Western Railroad Company—Purchase—Union Pacific Railroad Company, Boise Group Branch Lines* (not printed), served July 18, 1990; Finance Docket No. 31424, *Acquisition by Tampa Bay & Western Transportation, Inc. of a CSX Transportation, Inc. Line Between Sulphur Springs and Broco, FL* (not printed), served July 23, 1990; Finance Docket No. 31469, *South Carolina Central Railroad Company, Inc.—Purchase—CSX Transportation, Inc. Line Between East Greenville and Laurens, SC* (not printed), served July 30, 1990; Finance Docket No. 31616, *Railroad Switching Service of Missouri, Inc.—Acquisition—Missouri Pacific Railroad Company Lines Between Gardendale, Crystal City and Carrizo Springs, TX* (not printed), served July 31, 1990; Finance Docket No. 31584, *Delta Southern Railroad Company—Acquisition and Lease—Missouri Pacific Railroad Company Lines in Arkansas and Louisiana* (not printed), served August 2, 1990; Finance Docket No. 31570, et al., *Ogeechee Railway Company—Purchase and Trackage Rights—Missouri Pacific Railroad Company Lines in Louisiana* (not printed), served August 2, 1990; Finance Docket No. 31646, *Mid Michigan Railroad Company, Inc.—Lease and Operation Exemption—Missouri Pacific Railroad Company* (not printed), served August 28, 1990; and Finance Docket No. 31642, *Florida Central Railroad Company—Lease and Operation Exemption—CSX Transportation, Inc.* (not printed), served September 5, 1990.

⁵⁸ *Great Northern Pac.—Merger—Great Northern*, 331 I.C.C. 226 (1967).

⁵⁹ *Great Northern Pac.—Merger—Great Northern Ry.*, 6 I.C.C.2d 919 (1990).

⁵⁶ *Brandywine Valley R. Co.—Pur.—CSX Transp. Inc.*, 5 I.C.C.2d 764 (1989).

Mendocino conditions as clarified in *Wilmington Terminal*.⁶⁰

In other decisions interpreting labor protective conditions, the Commission, reviewing additional evidence, found that a complainant was not employed by the railroad when the merger took place and consequently was not entitled to receive the benefits of the labor protective conditions.⁶¹ Finally, the Commission resolved a complaint based on a provision of an implementing agreement that required employees electing to receive a lump sum separation allowance to authorize a deduction for union dues. The Commission found that the provision did not deprive employees of their *New York Dock* benefits because it related to benefits beyond those that employees can claim under *New York Dock*.⁶²

Short Line and Regional Railroads

The formation of new railroads under the Commission's class exemption continued at a slower pace despite resolution of many labor issues by the Supreme Court and by the Commission. Commission policy is to encourage the entry of new regional or local railroads to promote retention of service on lines that are unprofitable or only marginally profitable when operated by trunk line carriers. New firms are often better able to adapt to regional or local transportation needs, to develop new marketing and management ideas, and to operate more flexibly, efficiently, and profitably

than mainline railroads. The new vitality that they can offer may make a significant difference in rail transportation service in the region or locality.

During the fiscal year, 39 exemption notices were filed, 17 of which were Class I railroad dispositions.⁶³ One exemption notice involved 362 miles of rail line and another 840 miles.⁶⁴ Three others involved rail lines more than 100 miles long.

Abandonments

The Commission authorized the abandonment or discontinuance of service for 1,607 miles of track, a significant reduction from the 2,232 miles granted last fiscal year. Railroads may obtain Commission authority to abandon track or discontinue service by filing a formal abandonment application under 49 U.S.C. 10903. The Consolidated Rail Corporation (Conrail) may still obtain automatic approval of abandonments under the Northeast Rail Service Act of 1981 (NERSA) for lines previously designated as generating insufficient revenue. Railroads may also petition for an exemption under 49 U.S.C. 10505 from the formal abandonment procedures or may file a notice of exemption for lines that have been out of service for two years or more.⁶⁵

Formal Applications for Abandonment. The Commission's abandonment

⁶⁰ Finance Docket No. 31387 (Sub-No. 1), *Canadian National Railway Company—Lease from Grand Trunk Western Railroad Company* (not printed), served August 23, 1990.

⁶¹ Finance Docket No. 21478 (Sub-No. 11), *Great Northern Pacific & Burlington Lines, Inc.—Merger—Great Northern Railway in the Matter of James G. Moser and John T. Navin* (not printed), served November 7, 1989.

⁶² Finance Docket No. 30800 (Sub-No. 27), *Union Pacific/MKT Merger—TCU Implementing Agreement* (not printed), served May 4, 1990.

⁶³ Further information is provided in the Mergers, Consolidations, and Acquisitions section *supra*.

⁶⁴ Finance Docket No. 31720, *Dakota, Missouri Valley and Western Railroad, Inc.—Lease and Operation Exemption—Soo Line Railroad Company* (not printed), served September 19, 1990. (Lease and operate 298 miles; trackage rights over 64 miles.); and Finance Docket No. 31591, *Wheeling Acquisition Corporation—Acquisition and Operation Exemption—Lines of Norfolk & Western Railway Company* (not printed), served February 6, 1990. (576 miles by purchase and sublease; 264 miles of trackage rights.)

⁶⁵ The class exemption rules appear at 49 CFR 1152.50.

procedures⁶⁶ are designed to demonstrate whether a line proposed for abandonment provides adequate revenue to cover the cost of providing rail service, and whether the carrier's costs of continued operations outweigh the impact on shippers and localities.

Applications that are not protested are granted within 45 days of filing.⁶⁷ If a railroad anticipates little or no opposition, it may file a summary application under 49 CFR 1152.23, which allows the railroad to omit certain documentation.⁶⁸

Only one formal abandonment application, involving 28.49 miles, was denied because the line showed a profit.⁶⁹ Although opportunity costs showed that greater profits were available elsewhere, this fact alone was found insufficient to grant the requested abandonment.

Two abandonment applications generated extraordinary controversy and remained undecided at the close of the fiscal year. After an initial decision that would have denied Southrail Corporation's proposed abandonment of its 75-mile line in Alabama, the Commission required the railroad to recalculate off-branch costs and to submit revised rehabilitation and maintenance data. At the end of the fiscal year, the previous waiver of historic records was also revoked.⁷⁰ At the end of the fiscal

year, the Commission was also considering appeals to an initial decision that would grant Union Pacific Railroad Company's proposed abandonment of lines serving the State of Washington's lentil producing region.⁷¹

Out-of-Service Exemption. The out-of-service exemption may be used by any railroad that certifies that no local traffic has moved over the line for two or more years and that any overhead traffic can be rerouted. The Commission held that use of the out-of-service exemption is permissible even if a particular abandonment is part of a plan for future abandonments. The Commission denied a request to stay an exemption, holding that a carrier may remove track once Commission approval becomes effective,⁷² but that it does so at its own peril until judicial appeals have been exhausted.⁷³

In another proceeding, the Commission rejected the notice of exemption because the proposed abandonment would cause Burlington Northern Railroad Company to exceed a statutory limit of 350 abandoned miles in North Dakota but requested an Comptroller General's opinion on the continuing effect of the restriction.⁷⁴ This restriction was imposed in a 1981 amendment to a government appropriations act.

⁶⁶ 49 CFR Part 1152.

⁶⁷ See, e.g., Docket No. AB-83 (Sub-No. 9), *Maine Central Railroad Company and Springfield Terminal Railway Company—Abandonment and Discontinuance—In Cumberland, Sagadahox and Kennebec Counties, ME* (not printed), served January 8, 1990.

⁶⁸ Docket No. AB-55 (Sub-No. 346), *CSX Transportation, Inc.—Abandonment—In Fulton County, GA* (not printed), served July 18, 1990.

⁶⁹ Docket No. AB-55 (Sub-No. 336), *CSX Transportation, Inc.—Abandonment Between Dayton and Arcanum—In Darke, Preble, and Montgomery Counties, OH* (not printed), served July 31, 1990.

⁷⁰ Docket No. AB-301 (Sub-No. 6), *Southrail Corporation—Abandonment in Wayne and Green Counties, MS and Mobile County, AL* (not printed), served June 8, 1990, and September 27, 1990.

⁷¹ Docket No. AB-33 (Sub-No. 62), *Union Pacific Railroad Company—Abandonment—Between Tekoa and Fairfield in Whitman and Spokane Counties, WA* and Docket No. AB-33 (Sub-No. 63), *Union Pacific Railroad Company—Abandonment—Between Colfax and Tekoa and Thornton and Seltice in Whitman County, WA* (not printed), served July 3, 1990.

⁷² Docket No. AB-55 (Sub-No. 309X), *CSX Transportation, Inc.—Abandonment Exemption—In Putnam, Hendricks, and Marion Counties, IN* (not printed), served October 16, 1989, and December 21, 1989.

⁷³ See *Busboom Grain Co., Inc. v. ICC*, 830 F.2d 74 (7th Cir. 1987).

⁷⁴ Docket No. AB-6 (Sub-No. 318X) *Burlington Northern Railroad Company—Abandonment Exemption—In McKenzie County, ND* (not printed), served March 12, 1990.

Petitions for Exemption. These petitions for exemption from formal review of abandonment requests are considered individually and are decided under the standards of 49 U.S.C. 10505. Petitions for exemption may be used when the 2-year out-of-service class exemption is inappropriate. Normally the Commission will grant an exemption upon the evidence submitted in a petition and consider protests in petitions to revoke the exemption. The Commission did, however, institute an investigation when one petition contained insufficient information to determine the impact of the proposed abandonment.⁷⁵ The Commission also ruled that the abandonment exemptions cannot be used while railroads have outstanding trackage rights over the line until the trackage rights line obtains Commission approval for discontinuance.⁷⁶

Other new procedures were also used this year. First, the Commission reopened a case in which it had previously denied abandonment and assigned it to the Commission's Office of Hearings for new evidence regarding rehabilitation costs.⁷⁷ Second, CMC Real Estate Corporation, the corporate successor of the reorganized Milwaukee Road, was found able to use the Commission's exemption process even

though it was a non-carrier.⁷⁸ Third, a railroad's simultaneous filing of notices under the class exemption and a petition for exemption was affirmed.⁷⁹ The multiple filings were found not to interfere with the Commission's ability to assess the abandonments, and the Commission retains the ability to revoke these exemptions at any time. Fourth, a petition was denied because of the extensive disagreement between protestants and the railroad over local, switched, and overhead traffic levels. The Commission was unable to find whether continued operation was warranted and required a more thorough review under the formal abandonment procedures.⁸⁰

Offers of Financial Assistance. Offers to purchase or subsidize continued operations can be made to prevent any Commission authorized abandonment. These offers are the only way to prevent automatic approval of Conrail abandonments under NERSA. If the Commission sets the terms of an offer of financial assistance, which the offeror accepts, the railroad is required to transfer the line and the abandonment application is dismissed, or the exemption is revoked.⁸¹

For the first time, the Commission accepted a late-filed offer (4 days late)

⁷⁵ Docket No. 263 (Sub-No. 2X), *Staten Island Railway Corporation—Abandonment Exemption—In Richmond County, NY* (not printed), served November 7, 1989.

⁷⁶ Docket No. AB-1 (Sub-No. 231X), *Chicago and North Western Transportation Company—Abandonment Exemption—In Hennepin County, MN* (not printed), served June 26, 1990.

⁷⁷ Docket No. AB-286 (Sub-No. 2X), *The New York, Susquehanna and Western Railway Corporation—Abandonment Exemption—Portion of the Edgewater Branch In Bergen County, NJ* (not printed), served August 3, 1990.

⁷⁸ Docket No. AB-7 (Sub-No. 115X), *CMC Real Estate Corporation—Abandonment Exemption—In Rockford, IL* and Docket No. AB-57 (Sub-No. 30X), *Soo Line Railroad Company—Discontinuance of Operations Exemption—In Rockford, IL* (not printed), served February 12, 1990.

⁷⁹ Docket No. AB-55 (Sub-No. 319X), *CSX Transportation, Inc.—Abandonment Exemption—In Nicholas County, WV* (not printed), served April 12, 1990.

⁸⁰ Docket No. AB-55 (Sub-No. 282X), *CSX Transportation, Inc.—Abandonment Exemption—In Grant, Delaware, Henry, Randolph, and Wayne Counties, IN* (not printed), served October 16, 1989.

⁸¹ See, e.g., Docket No. AB-55 (Sub-No. 308X), *CSX Transportation, Inc.—Abandonment and Discontinuance of Trackage Rights Exemption—In Wise County, VA* (not printed), served October 19, 1989.

to purchase a line even though no other offers were pending because the exemption had not yet become effective.⁸² The effective date of the exemption was also postponed to afford the offeror an opportunity to obtain financial information on the line's value from the carrier.

Following a rare court remand⁸³ of a Commission forced-sale valuation of railroad property, the Commission increased the purchase price for Iowa Terminal Railroad Company's 10.4-mile Mason City, Iowa, line by \$134,123 and fixed the price at \$453,623. This railroad presented unique problems of valuation because the line is one of the Nation's very few all electric railroads with great historic significance. Also, for the first time the Commission awarded interest on its valuation starting from the date of transfer to the purchase.⁸⁴

The Commission rejected the Clark County-Fayette County Port Authority's offer to purchase only a portion of a line after terms had been set even though the port authority could not pay the purchase price of \$2,958,990 set by the Commission for the entire line.⁸⁵ Under the Commission's forced sale procedures, the offeror must accept or reject the terms on whatever it proposes. This policy prevents protracted litigation and does not prevent any voluntary sale (or subsidy) of the line outside the Commission's forced sale procedures.

The Commission discontinued two related rulemaking proceedings finding that because abandonments are intensely fact-specific, no single set of guidelines could apply to all situations, and, therefore, the Commission should rely on a case-by-case determination of these issues. One proceeding considered whether to prescribe rules to govern the compensation of carrier-vendors for tax liability incurred upon the forced sale of personal property under the offer of financial assistance procedures.⁸⁶ The other considered whether purchase or subsidy issues should influence abandonment decisions.⁸⁷

Public Use Conditions. These conditions, under 49 U.S.C. 10906, may include a prohibition on the sale, lease, exchange or other disposal of a rail line approved for abandonment for a period of not more than 180 days after the effective date of the order authorizing abandonment and require that the properties be offered, on reasonable terms, for sale for public purposes. Because exemption proceedings, unlike abandonment applications, do not involve extensive pre-filing public notice, requests for public use conditions are generally filed after notice of the exemption authorization is published in the *Federal Register*. Public use conditions may be obtained through petitions to reopen or to revoke abandonment exemptions.⁸⁸

Other conditions to abandonments were imposed to comply with various

⁸² Docket No. AB-32 (Sub-No. 42X), *Boston and Maine Corporation and Springfield Terminal—Abandonment and Discontinuance Exemption—In Berkshire County, MA* (not printed), served July 6, 1990.

⁸³ *Iowa Terminal R. Co. v. ICC*, 853 F.2d 965 (D.C. Cir. 1988).

⁸⁴ Docket No. AB-269, *Iowa Terminal Railroad Co.—Abandonment—In Cerro Gordo and Floyd Counties, IA* and Docket No. AB-269 (Sub-No. 1X) *Iowa Terminal Railroad Co.—Abandonment Exemption—In Cerro Gordo and Floyd Counties, IA* (not printed), served April 25, 1990, and September 4, 1990.

⁸⁵ Docket No. AB-31 (Sub-No. 29), *The Grand Trunk Western Railroad Company—Abandonment—In Clark, Madison and Fayette Counties, CA* (not printed), served August 2, 1990.

⁸⁶ Ex Parte No. 274 (Sub-No. 19), *Increasing the Offer of Financial Assistance Purchase Price to Compensate for the Tax Liability Incurred on the Sale of Personal Property* (not printed), served February 23, 1990.

⁸⁷ Ex Parte No. 274 (Sub-No. 18), *Rail Abandonments—Consideration of Possible Sale or Subsidy of Rail Line in Analysis of an Abandonment Application Under 49 U.S.C. 10903* (not printed), served February 21, 1990.

⁸⁸ *Rail Abandonments—Public Use Conditions*, 4 I.C.C.2d 109 (1987).

environmental and historical statutes and are discussed in the Chapter on Environment.

Interim Trail Use. Notices or Certificates of Interim Trail Use (NITU or CITU) under the National Trails System Act⁸⁹ were issued to preserve rail rights-of-way for future restoration of rail service and to provide for interim trail use. Rail banking provides a means to discontinue service over a line while preserving Commission jurisdiction over the right-of-way. In at least one instance, a CITU was issued to facilitate an offer of financial assistance to purchase a line while allowing the carrier to terminate its common carrier obligation to provide continued service.⁹⁰ The line was subsequently sold for restored rail service. The Commission also received its first request to terminate use of a portion of a right-of-way previously authorized for trails use and reactivate rail service over part of it.⁹¹ Related to the reactivation was a new railroad's acquisition and operation of a connecting line, which was approved through the Commission's class exemption for new carriers, and a requested exemption for construction, which was being considered.⁹²

If a railroad has not fully consummated an abandonment, which is a question of fact determined by such circumstances as whether the rail and right-of-way remain intact, the Commis-

sion determines that ICC jurisdiction over the line continues and trails use may be imposed even if there is a "gap" in the period for negotiating trails use.⁹³

Upon petition of the Rails to Trails Conservancy, the Commission instituted a proceeding⁹⁴ to consider The National Trails System Improvements Act's⁹⁵ amendments to the National Trails System Act. The new Act provides for the retention and management by the United States of abandoned railroad rights-of-way that originated under Federal land grants. The Commission rejected requests for stays of abandonment grants and for railroads to conduct title searches of rights-of-way scheduled for abandonment, but adopted rules requiring railroads to provide notice of proposed abandonment to the Recreational Resources Assistance Division and the Land Resources Division of the National Park Service and to the Department of Agriculture's Chief of the Forest Service, which will primarily implement the new Act.⁹⁶

In response to the report of the Senate Committee on Appropriations,⁹⁷ the Commission issued a report on the conversion of rail corridors to trails.⁹⁸ The report found that approximately 22 percent of rights-of-way proposed for abandonment were subject to trails use in fiscal year 1989, and 14 percent in fiscal year 1988. The report affirmed

⁸⁹ 16 U.S.C. 1247(d).

⁹⁰ Docket No. AB-290 (Sub-No. 68), *Norfolk and Western Railway Company—Abandonment—Between St. Marys and Minster in Auglaize County, OH* (not printed), served February 26, 1990.

⁹¹ Docket No. AB-298 (Sub-No. 1X), *Iowa Southern Railroad Company—Exemption—Abandonment in Pottawattamie, Mills, Fremont, and Page Counties, IA*.

⁹² Finance Docket No. 31718, *Iowa Power, Inc. and CBEC Railway, Inc.—Acquisition and Operation Exemption—Iowa Southern Railroad Company Line Near Council Bluffs, IA* (not printed), served August 17, 1990, and Finance Docket No. 31717, *Iowa Power, Inc.—Construction Exemption—Council Bluffs, IA*.

⁹³ Docket No. AB-3 (Sub-No. 63), *Missouri Pacific Railroad Company—Abandonment—In Okmulgee, Okfuskee, Hughes, Pontotoc, Coal, Johnston, Atoka, and Bryan Counties, OK* (not printed), served January 2, 1990.

⁹⁴ Ex Parte No. 274 (Sub-No. 13A), *Rail Abandonments—National Trails System Improvements Act* (not printed), served October 18, 1989.

⁹⁵ Public Law No. 100-470 (1988).

⁹⁶ *Rail Abandonments—National Trails System Improve. Act*, 6 I.C.C.2d 910 (1990).

⁹⁷ S. Rep. No. 100-121, 101st Cong., 1st Sess. (1989).

⁹⁸ *Report of the Interstate Commerce Commission, Conversions of Rail Corridors to Trails*, April 1, 1990.

Commission policy that interim trails use is dependent on the voluntary agreement of a railroad; that a right-of-way may be transferred to an interested third party if the railroad agrees; that parties attempting to negotiate a trails use agreement may be given time extensions beyond the normal 180-day period to reach a final agreement; and that adjacent property owners may assert their interests in former railroad rights-of-way only after a trails-use certificate is vacated and a certificate of abandonment issued.

Constructions

Three exemption requests for constructions were granted. Jackson County Port Authority obtained authority to construct 2.5 miles of rail line connecting a new port facility with a CSX Transportation (CSXT) rail line at Pascagoula, Mississippi.⁹⁹ Burlington Northern Railroad Co. (BN) received retroactive approval to construct a 1,568-foot connector track between its mainline and Illinois Central Railroad Co.'s line near Waltonville, in Jefferson County, Illinois.¹⁰⁰ The Joppa and Eastern Railroad Co. received authority to construct a 4.5-mile rail line to connect the Joppa Steam Electric Station at Joppa, Illinois, to a BN mainline, but the approval was subject to completion of the environmental review and a further Commission decision.¹⁰¹

Following an extensive environmental review, CSXT's notice of exemption to

construct a 7.5-mile line to serve the Gaston Steam Electric Generating Plant near Wilsonville, Alabama, was allowed to become effective subject to mitigation measures.¹⁰² The Commission required mitigation of anticipated water, terrestrial, and transportation impacts.

Rates

Recyclables litigation was virtually concluded this year, with final decisions being issued in three nonferrous recyclable commodity cases that had been held in abeyance pending resolution of the *Aluminum Association* case,¹⁰³ and initial decisions were issued in two remaining cases.

Excluding time-barred shipments, reparations were awarded in two proceedings based on the difference between the charges paid and those that would have been applicable at the cap level, the maximum allowable revenue-to-variable cost (R/V/C) ratio.¹⁰⁴ In the other three cases, reparations were

⁹⁹Finance Docket No. 31498, *Southern Electric Generating Company—Petition for Exemption—Construction of a Rail Line in Shelby County, AL* (not printed), served January 10, 1990.

¹⁰⁰No. 39038, *et al.*, *The Aluminum Association, Inc., et al. v. Alton & Southern Ry. Co., et al.* (not printed), served January 3, 1989.

¹⁰¹No. 39886, *Huron Valley Steel Corp. v. Seaboard System Railroad, Inc., et al.* (not printed), served November 7, 1989 (*Huron Valley*), appeal denied in decision (not printed), served September 25, 1990; and No. 39912, *Pozzolan International v. Union Pacific Railroad, et al.* (not printed), served November 16, 1989, appeal denied in decision (not printed), served May 29, 1990 (*Pozzolan*). In *Pozzolan* the Administrative Law Judge also allowed defendants to offset reparations claims on over-the-cap excessive charges with foregone increases. In *Huron Valley*, the Commission on appeal took the unusual step of allowing individual rate complaints for nonferrous scrap metal moving from south to east, finding that 1983 aggregate compliance data were not representative of shipper's subsequent movements. The Commission also stated that it would reopen for reconsideration its 1983 aggregate compliance proceeding with respect to these movements.

⁹⁹Finance Docket No. 31536, *Jackson County Port Authority—Construction Exemption—Pascagoula, MS* (not printed), served August 21, 1990. Approval was granted, subject to completion of the environmental review and a further Commission decision.

¹⁰⁰Finance Docket No. 31599 (Sub-No. 2), *Burlington Northern Railroad Company—Connector Track Construction—Near Waltonville in Jefferson County, IL* (not printed), served June 26, 1990.

¹⁰¹Finance Docket No. 31656, *Joppa and Eastern Railroad Co.—Construction Exemption—Joppa, IL* (not printed), served July 5, 1990.

awarded using either the cap or base rate (the individual rate that was in effect after the carrier achieved aggregate compliance with the rate cap) level.¹⁰⁵

Final rules were adopted to ensure continued compliance with the statutory cap level in 49 U.S.C. 10731(e).¹⁰⁶ The Commission determined that although calculation of the revenue to variable cost ratio (R/VC ratio) (corresponding to the cap and to resolution of actual territorial average R/VC ratios) will be made annually, neither industry-wide rate reductions nor increases will be used. Disputes over whether individual rates exceed the R/VC cap will be separately litigated. Rules were established to govern the timing and content of annual submissions.

Additionally, substantive and procedural rules regarding the lawfulness of recyclables rate increases were established for individual investigations and complaints. Rates above the cap may not be increased; rates at or below the cap may be increased up to the maximum cap level. Special prejustification procedures apply to rate increase proposals for above-the-cap rates and rates belonging to above-the-cap groups. Finally, a conforming amendment was made to the Commission's railroad cost recovery procedures.

Rate reasonableness litigation on coal rates continued to decline, and the Commission continued to clear its docket. Market dominance and other issues were resolved in a coal rate case involving three coal suppliers and a broker who were challenging various group

rates on export coal moving through eastern ports.¹⁰⁷ The defendant railroads were found to be market dominant over the coal suppliers but not over the broker whose complaint was dismissed. Further comment and additional data on the parties' stand-alone-cost (SAC) presentations were invited, and the proceeding was reassigned to an Administrative Law Judge for the receipt of additional information. The parties were able to settle their dispute and individual complainants were dismissed in a series of decisions.¹⁰⁸

In a remanded coal rate investigation, all constrained market pricing (CMP) issues other than those relating to SAC were resolved. Alternative (non-CMP) methodologies were rejected, and the carriers were found to have met their burden of showing revenue inadequacy and efficient management. Certain gaps in the parties' SAC presentation were identified, and additional comments and evidence were requested.¹⁰⁹ At the end of the fiscal year, the procedural schedule was stayed pending resolution of several discovery matters.

In a non-coal rate reasonableness case, the issue of whether to reconsider a prior decision regarding tendered SAC evidence alongside complainant's R/VC presentation was presented.¹¹⁰ However, at the end of the fiscal year, complainant filed a motion to dismiss these proceedings with prejudice.

¹⁰⁵No. 39884, *Aluminum Co. of America v. Alton & Southern Ry. Co.*, et al. (not printed), served November 8, 1989; appeal denied in decision (not printed), served May 14, 1990; and Nos. 39639 and 39812, *Vulcan Materials Co. v. Alton & Southern Ry. Co.*, et al. (not printed), served March 8 and 19, 1990; appeal filed March 28, 1990.

¹⁰⁶*Cost Ratios For Recyclables—Compliance Procedures*, 6 I.C.C.2d 103 (1989), and in a decision (not printed), served September 6, 1990.

¹⁰⁷*Coal Trading Corp., et al. v. B&O Railroad Co.*, et al., 6 I.C.C.2d 361 (1990).

¹⁰⁸No. 38301S, *Coal Trading Corporation, et al. v. The Baltimore and Ohio Railroad Company, et al.* (not printed), served April 19, May 14, May 25, June 5, and June 13, 1990.

¹⁰⁹*Bituminous Coal—Hiawatha, UT, to Moapa, NV*, 6 I.C.C.2d 1 (1989).

¹¹⁰No. 38239S, *Amstar Corporation v. The Alabama Great Southern Railroad* (not printed), served November 22, 1989. The preference for the R/VC methodology over SAC in non-coal cases was explained in *McCarty Farms v. Burlington Northern, Inc.*, 3 I.C.C.2d 822 (1987) and 4 I.C.C.2d 262 (1988).

In a complaint challenging pulpwood and wood chips rates, all the as-sailed rates were found to exceed the jurisdictional threshold and the market dominance of the railroad was reviewed for the entire period of the movements. Applying its qualitative standards,¹¹¹ the Commission found defendants market dominant over certain movements originating at sites in South Dakota, Wyoming, and Montana, and dismissed the complaint as to the remaining movements.¹¹²

Reparations were granted through two exemption petitions. One involved shipments that did not qualify for the contract amendment class exemption in 49 CFR 1313.3(c).¹¹³ The other involved an admittedly unreasonable tariff rate for which relief was time-barred under the Commission's Special Docket procedures under 49 CFR 1130.2(3).¹¹⁴ Another exemption petition, to waive collection of interest, was dismissed for lack of Commission jurisdiction.¹¹⁵

Car hire costs continued to be litigated by railroads and shippers. Tariffs setting charges for the movement of empty private tank cars to repair sites for ordinary repair or maintenance were found not to be "departure" tariffs under the National Tank Car Allowance Agreement.¹¹⁶ Tariffs that depart in any

way from the mileage allowance system prescribed in the Agreement are subject to Commission investigation and must be justified by a showing of special circumstances. As a result of the Commission's decision, aggrieved car owners must proceed by complaint.

The Commission also approved a partial settlement in a costing dispute over certain privately owned tank cars.¹¹⁷ Cost is a key element in computing the mileage allowances railroads pay car owners for use of their cars.

A proceeding was instituted to facilitate private sector solutions to periodic grain car supply problems.¹¹⁸ As part of this proceeding, the Commission held a conference involving grain shippers and carriers on September 18, 1990.

In response to a petition for declaratory order, the Commission determined that non-denatured ethyl alcohol was derived from petroleum. This clarified the commodity's tariff description and Standard Commodity Classification Code, which determine the applicable common carrier rates.¹¹⁹ In an overcharge complaint, an Administrative Law Judge found applicable a combination rate constructed by shippers that yielded lower transportation charges than the single factor joint rate applied by carriers.¹²⁰ Failure to provide rail service resulted in an award¹²¹ of additional damages with

¹¹¹Intramodal, intermodal, product, and geographic competition. See *Market Dominance Determinations*, 365 I.C.C. 118 (1981), and *Product and Geographic Competition*, 2 I.C.C.2d 1 (1985).

¹¹²No. 37626, *Consolidated Papers, Inc., et al. v. Chicago & North Western Transp. Co., et al.* (not printed), served May 15, 1990.

¹¹³No. 40430, *Southern Pacific Transp. Co.—Exemption—To Pay Reparations* (not printed), served May 30, 1990.

¹¹⁴No. 40434, *Illinois Cent. R. Co.—Exemption—Payment of Reparations* (not printed), served July 3, 1990.

¹¹⁵No. 40467, *Union Railroad Co.—Petition for Exemption to Waive Collection of Interest* (not printed), served September 14, 1990.

¹¹⁶*Charges for Movement of Empty Cars, B&P RR, Inc.*, 7 I.C.C.2d 18 (1990).

¹¹⁷Ex Parte No. 328 (Sub-No. 1), *Association of American Railroads, et al.—Petition for Clarification* (not printed), served August 31, 1990.

¹¹⁸Ex Parte No. 490, *Grain Car Supply—Conference of Interested Parties* (not printed), served July 27, 1990.

¹¹⁹No. 40361, *Transportation Financial Services, Inc.—Petr. for Decl. Ord.* (not printed), served September 10, 1990.

¹²⁰No. 40365, *National Starch and Chemical Corp. v. Atchison, T.&S.F. Ry. Co., et al.* (not printed), served July 25, 1990 (appeals filed August 14 and September 4, 1990).

¹²¹*Louisiana Railcar, Inc. v. Missouri Pacific Railroad Co.*, 5 I.C.C.2d 542 (1989).

interest based on complainant's mitigation evidence.¹²²

The Cost Recovery Percentage (CRP) must be calculated annually for all traffic received by rail carriers.¹²³ The CRP establishes the jurisdictional threshold RVC ratio for market dominance determinations if the CRP falls between 170 and 180-percent. Because the Commission calculated CRP's of 287.5 percent and 210.5 percent, respectively, for 1986 and 1987, the jurisdictional threshold remained at its 180-percent statutory ceiling for both years.¹²⁴

Two Class I railroads were revenue adequate in 1988. Both Florida East Coast Railroad Company and Norfolk Southern Corporation gained revenues in excess of the 11.7-percent target cost of capital for 1988.¹²⁵ All other Class I railroads were found revenue inadequate. The Commission subsequently determined that 11.5 percent represented the railroad industry's composite cost of capital for 1989.¹²⁶

The Rail Cost Adjustment Factor (RCAF) is published quarterly.¹²⁷ The RCAF reflects the changing composition of railroad costs attributable to inflation and helps to establish rate flexibility on market dominant traffic. It is based on the quarterly all-inclusive index of costs prepared by the Association of American Railroads (AAR).

Several revisions to the methodology used for calculating the quarterly index were made. The Commission determined which underlying data items are non-proprietary and subject to pub-

lic release¹²⁸ and revised the methodology for computing both the fuel¹²⁹ and the materials and supplies¹³⁰ components. Beginning with the fourth quarter of 1990, the fuel index was computed using an average monthly price rather than a mid-month price, and the materials and supplies component was calculated exclusively from the data supplied by the seven largest Class I railroads. A notice of a proposed data collection form and guidelines to be used in collecting the fuel component data was also published.¹³¹

Because the quarterly index now must be adjusted for productivity, as measured by a multi-year lagged average, the AAR files both an adjusted and unadjusted index. The Commission subsequently lengthened the averaging period for the productivity adjustment from 6 to 7 years, beginning with the third quarter 1990 RCAF (Adjusted).¹³² Based on a 7-year productivity adjustment average (1982-1988) of 1.044, the four quarterly RCAFs for 1990 were found to be 1.056; 1.054; 1.043; and 1.058.¹³³

¹²² *Railroad Cost Recovery Procedures*, 6 I.C.C.2d 530 (1990), petition for reconsideration denied, Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures* (not printed), served September 21, 1990.

¹²³ *Railroad Cost Recovery Procedures*, 6 I.C.C.2d 634 (1990).

¹²⁴ *Railroad Cost Recovery Procedures*, 6 I.C.C.2d 956 (1990).

¹²⁵ Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures* (not printed), served August 20, 1990.

¹²⁶ Ex Parte No. 290 (Sub-No. 4), *Railroad Cost Recovery Procedure—Productivity Adjustment* (not printed), served June 21, 1990.

¹²⁷ Ex Parte No. 290 (Sub-No. 5) (90-1), *Quarterly Rail Cost Adjustment Factor* (not printed), served December 22, 1989; Ex Parte No. 290 (Sub-No. 5) (90-2), *Quarterly Rail Cost Adjustment Factor* (not printed), served March 20, 1990; Ex Parte No. 290 (Sub-No. 5) (90-3), *Quarterly Rail Cost Adjustment Factor* (not printed), served June 21, 1990; and Ex Parte No. 290 (Sub-No. 5) (90-4), *Quarterly Rail Cost Adjustment Factor* (not printed), served September 20, 1990.

¹²² *Id.*, 7 I.C.C.2d 30 (1990).

¹²³ 49 U.S.C. 10709(d)(5)(A).

¹²⁴ Ex Parte No. 399, *Cost Recovery Percentage* (not printed), served December 6, 1989.

¹²⁵ *Railroad Revenue Adequacy—1988 Determination*, 6 I.C.C.2d 933 (1990).

¹²⁶ *Railroad Cost of Capital—1989*, 6 I.C.C.2d 836 (1990).

¹²⁷ 49 U.S.C. 10707a(a)(2)(B).

In a related matter, the Commission voted not to suspend and not to investigate a proposal by several of the Nation's Class I railroads to cancel participation in RCAF tariffs.¹³⁴

Development of a defensible maximum rate framework for non-coal commodities was ongoing during the fiscal year.¹³⁵ The Commission reopened a proceeding, on its own motion, to reconsider its maximum reasonable rate determination.¹³⁶

Rate-related rulemakings included several that were discontinued. One, involving changed procedures for filing Rail Carrier Cost Recovery tariffs, was discontinued after the parties voluntarily agreed to make the procedures more "user friendly."¹³⁷ Another was dismissed as moot after the Commission adopted the Uniform Rail Costing System (URCS)¹³⁸ in lieu of Rail Form A as the preferred general purpose costing system for regulatory purposes.¹³⁹ The third would have exempted carriers from the filing requirement applicable to government rate quotations under 49 U.S.C. 10721, but was discontinued after commentors demonstrated a need for continued access to the records.¹⁴⁰

The Commission began a 2-year review of URCS and invited public comment on: (1) account aggregation; (2) data treatment for merged railroads; (3) econometric and statistical issues; (4) the use of engineering studies or other non-regression data to improve or validate general purpose costs; and (5) the proper time horizon for determining the fixed or variable extent of capacity-related costs.¹⁴¹ A preliminary decision is scheduled for October 20, 1992.

The interim requirement to back up electronically filed tariffs with print copies was extended indefinitely.¹⁴² Procedures for seeking waiver from the rules governing the construction and filing of rail contracts and contract summaries¹⁴³ were established.¹⁴⁴

Class exemptions were expanded to exclude from regulation the rail transportation of various manufactured commodities grouped into 22 Standard Commodity Classification Codes (STCC).¹⁴⁵ Exceptions included: commodities previously exempted; recyclable products; specific movements previously found market dominant; car service, car hire, and private car allowances; and existing Class III railroad protections in the case of boxcar traffic. Antitrust immunity was also removed.

Certification of State agencies to regulate intrastate rates was initially completed with final decisions being issued in the last two proceedings. In the first, the Commission denied a shipper petition to reopen, reconsider, and revoke Illinois' 5-year certification to regulate intrastate rail rates that began on

¹³⁴ Suspension Case No. 71513, *Proposal by Nation's Class I Railroads to Cancel (De-Link) Their Local and Joint Rates and Charges from the Commission's RCAF/RCCR Process*.

¹³⁵ Ex Parte No. 347 (Sub-No. 2), *Rate Guidelines—Non-Coal Proceedings*.

¹³⁶ No. 40073, *South-West Railroad Car Parts v. Missouri Pacific Railroad Company* (not printed), served June 1, 1990.

¹³⁷ Ex Parte No. 290 (Sub-No. 6), *Amendments to Rail Carrier Cost Recovery Tariffs* (not printed), served November 20, 1989.

¹³⁸ *Uniform Railroad Costing System*, 5 I.C.C.2d 894 (1989).

¹³⁹ Ex Parte No. 431, *Adoption of the Uniform Railroad Costing System for the Purposes of Determining Variable Costs in Surcharge and Jurisdictional Threshold Determinations* (not printed), served June 7, 1990.

¹⁴⁰ Ex Parte No. 346 (Sub-No. 23), *Railroad Exemption—Filing Quotations Under Section 10721* (not printed), served August 15, 1990.

¹⁴¹ Ex Parte No. 431 (Sub-No. 2), *Review of the General Purpose Costing System* (not printed), served January 11 and September 21, 1990.

¹⁴² *Electronic Filing of Tariffs*, 7 I.C.C.2d 1 (1990).

¹⁴³ 49 CFR 1313.7(a), (b), and (c).

¹⁴⁴ *Railroad Transportation Contracts*, 6 I.C.C.2d 345 (1989).

¹⁴⁵ *Rail Exemption—Misc. Manufactured Commodities*, 6 I.C.C.2d 186 (1989).

September 21, 1989.¹⁴⁶ In the second, Oklahoma was certified to regulate intrastate rates for the 5-year period beginning August 30, 1990.¹⁴⁷ Two States, New Hampshire and Tennessee withdrew from intrastate regulation, and at their requests, jurisdiction was transferred to the Commission.¹⁴⁸

The Staggers Act also requires the Commission to recertify State agencies as their initial 5-year certification expires. Following simplified recertification procedures adopted in fiscal year 1989,¹⁴⁹ Alabama, Arkansas, Kansas, Mississippi, Montana, South Carolina, and Wisconsin were recertified for 5-year periods.¹⁵⁰ Recertification requests from the States of Iowa, Maryland, Michigan, Missouri, New York, North Dakota, and West Virginia were pending at the end of the fiscal year.

Joint Rate Surcharges, Cancellations, and Competitive Access

Railroad carrier authority to impose commodity surcharges expired on September 30, 1984. Under a Commission exemption, however, negative surcharges (i.e., allowances) may still be applied. Carriers may also impose surcharges on traffic originating or terminating on light-density lines,¹⁵¹ which are those carrying less than 3,000,000 ton-miles of freight per mile for a revenue-inadequate carrier, or 1,000,000 ton-miles for a revenue-adequate carrier, in the most recent calendar year for which data are available. Surcharges may be applied when existing rates do not provide revenues adequate to cover 110 percent of carrier variable costs and 100 percent of the reasonably expected costs of continuing to operate a line.

Joint rate surcharge activity continued in fiscal year 1990 at the stable low level maintained in recent years.¹⁵² Joint rate cancellations, however, dropped off to 75 from the unusual peak of 147 reached in fiscal year 1989.¹⁵³ The Soo Line Railroad Company (Soo Line) continued to dominate the joint rate cancellation activity. The Consolidated Rail Corporation (Conrail), which dominated the surcharge and cancellation activity when authority was first granted, accounted for no new surcharges and only five joint rate cancellations. Light density line surcharges were filed mainly by short line and regional railroads.

The railroads filed 27 light density line surcharges for fiscal year 1990,

¹⁴⁶ Ex Parte No. 388 (Sub-No. 7), *Intrastate Rail Rate Authority—Illinois* (not printed), served February 20, 1990.

¹⁴⁷ Ex Parte No. 388 (Sub-No. 26), *Intrastate Rail Rate Authority—Oklahoma* (not printed), served August 30, 1990.

¹⁴⁸ Ex Parte No. 388 (Sub-No. 20), *Intrastate Rail Rate Authority—New Hampshire* (not printed), served January 26, 1990, and Ex Parte No. 388 (Sub-No. 30), *Intrastate Rail Rate Authority—Tennessee* (not printed), served February 14, 1990.

¹⁴⁹ *State Intrastate Rail Rate Authority*, 5 I.C.C.2d 680 (1989).

¹⁵⁰ Ex Parte No. 388 (Sub-No. 1), *Intrastate Rail Rate Authority—Alabama* (not printed), served May 22, 1990; Ex Parte No. 388 (Sub-No. 2), *Intrastate Rail Rate Authority—Arkansas* (not printed), served November 14, 1989; Ex Parte No. 388 (Sub-No. 5), *Intrastate Rail Rate Authority—Georgia* (not printed), served April 23, 1990; Ex Parte No. 388 (Sub-No. 10), *Intrastate Rail Rate Authority—Kansas* (not printed), served August 27, 1990; Ex Parte No. 388 (Sub-No. 16), *Intrastate Rail Rate Authority—Mississippi* (not printed), served January 23, 1990; Ex Parte No. 388 (Sub-No. 18), *Intrastate Rail Rate Authority—Montana* (not printed), served August 24, 1990; Ex Parte No. 388 (Sub-No. 29), *Intrastate Rail Rate Authority—South Carolina* (not printed), served August 27, 1990; and Ex Parte No. 388 (Sub-No. 36), *Intrastate Rail Rate Authority—Wisconsin* (not printed), served August 23, 1990.

¹⁵¹ 49 U.S.C. 10705a(b)(1).

¹⁵² Under Section 217(c)(1) of the Staggers Rail Act, the Commission is to include in each of its annual reports an analysis of the preceding year's surcharge and joint-rate cancellation activity.

¹⁵³ All counts of surcharges and cancellations cover those items becoming effective during Fiscal 1990, i.e., October 1, 1989, to September 30, 1990, including those actually filed prior to beginning of the fiscal year.

three more than the previous year. Class I railroads accounted for only one, filed by the Grand Trunk Western Railroad Company (GTW), for \$500 applying to four Ohio stations. Twenty-one Class III railroads filed 26 light density line surcharges. Fourteen of the surcharges applied on "all traffic" from or to specified points on respective short line railroads. One applied to all traffic on the railroad (St. Lawrence Railroad) and one specified a single shipper. The surcharge amounts for all filings ranged from \$33 to \$2,500 a car, with 16 of the 33 surcharge amounts falling in the \$100 to \$400 range, 7 falling below this range, and 10 exceeding this range.¹⁵⁴ Overall, the revenue impact of the surcharges is expected—as it has been for several years—to be minor; often the result of imposing high surcharge amounts is simply to discourage traffic that may be uneconomic.

Railroads of all three size classes engaged in joint rate cancellations. Conrail's five cancellations involved pipe or pipe fittings from Bessemer, Alabama, to Aburlington, New Jersey (Conrail had, in fiscal year 1989, cancelled joint rates on pipe from Southwestern Territory to Central Eastern Territory), and coal from certain mines in Ohio to Toledo, Ohio. Five other Class I railroads filed cancellations. CSX Transportation, Inc. filed 14, covering point to point movements of certain petroleum products, wheat flour, certain chemicals, and turbines. Illinois Central Railroad Company's six cancellations affected chemicals. Twenty of Soo Line's 38 cancellations involved traffic to Canada. Commodities affected by Soo Line cancellations included scrap iron, soybean meal, and agricultural machinery. Southern Pacific Transportation Company filed two joint rate cancella-

tions, applicable to plastic resins at points in Texas. Norfolk Southern Corporation's five joint rate cancellations covered petroleum oil, bauxite, and lime. One Class II railroad, the Elgin, Joliet & Eastern Railway Company, filed two cancellations on ingot molds and scrap iron and steel. Finally, two Class III railroads accounted for one cancellation each.

Additionally, joint rates and divisions of revenues established between 1936 and 1940 between Official and Southwestern Territories via Southern Freight Territory, were vacated to allow market and competitive factors to determine revenue distributions on through-movement traffic.¹⁵⁵ Progress continued in a proceeding involving rates via eastern and mid-western gateways canceled by Conrail in 1981. The Norfolk and Western Railway Company was authorized to withdraw its rate prescription petition after a settlement was negotiated.¹⁵⁶ Only two rate prescription petitions remain.

Trackage rights compensation was established for a trackage rights agreement that expired.¹⁵⁷ The Commission refused to apply the competitive access standards sought by the owning carrier and instead directed the parties to develop a final compensation formula consistent with the Commission's SSW Compensation methodology.¹⁵⁸

The joint rate surcharge and cancellation provisions of the Staggers Rail Act continue to be used, affording flexibility where carriers need it to maintain financial viability.

¹⁵⁴ Nos. 25390 (Sub-No. 1) and 26429 (Sub-No. 1), *Official-Southwest Divisions via Southern Freight Territory* (not printed), served July 13, 1990.

¹⁵⁵ No. 38676 (Sub-No. 3), *Changes in Routing Provisions—Norfolk and Western Railway Company* (not printed), served August 3, 1990.

¹⁵⁷ *Arkansas & Missouri R. Co. v. Missouri Pacific R. Co.*, 6 I.C.C.2d 619 (1990).

¹⁵⁸ See *St. Louis Southwestern Ry. Co. Compensation—Trackage Rights*, 4 I.C.C.2d 668 (1987).

¹⁵⁴ The number of surcharge amounts exceeds the number of surcharges because some surcharges were multi-part, applying different amounts to different subgroups of traffic.

Freight Car Service

As reported by the Association of American Railroads (AAR), surpluses of railroad-controlled freight cars increased in fiscal year 1990. The daily average surplus at the end of September 1989 was 37,188 cars, compared to an average of 48,772 cars at the end of September 1990. The daily average surplus during the entire fiscal year 1990 was 43,184 cars. On October 1, 1989, Class I railroads reported a combined fleet ownership of 703,117 cars, but by October 1, 1990, that ownership level had dropped to 668,761 cars. This was a net reduction in the combined Class I fleet of 34,356 cars, which is the difference between the number of cars installed (8,592) and the number of cars retired or otherwise lost from the control of the Class I carriers (42,948). On September 30, 1990, the entire rail car fleet of Classes I, II, and III railroads, private car companies, and shippers consisted of 1,211,831 cars, an overall reduction of 20,596 cars from the prior fiscal year.

The AAR also reported that fiscal year 1990 freight car loadings totaled 17,473,212, a decrease of 2,393 cars from the fiscal year 1989 car loading total of 17,475,605. Relative to individual commodity loadings, coal ranked first with 6,638,717 coal-loaded cars, an increase of 280,576 cars over the 6,358,141 cars loaded with coal in fiscal year 1989. Cars carrying grain ranked second in total loadings with 1,486,931 cars, up from the 1989 loading figure of 1,453,756 cars. The third heaviest commodity loadings were chemicals and allied products, with 1,444,726 cars during the reporting period, or 16,248 carloads over the 1,428,478 cars loaded in fiscal year 1989. Car loadings of motor vehicles and equipment decreased by 94,220 from 995,537 cars in fiscal year 1989, to 901,317 cars in fiscal year 1990. (The 1989 loading figures noted above for

grain, chemicals and allied products, and motor vehicles and equipment are revisions of the data reported in the Commission's previous annual report.)

While carloadings decreased only slightly in fiscal year 1990 compared to 1989, coal loadings increased 4.4 percent and accounted for 38.0 percent of all cars loaded. The largest percentage increase over fiscal year 1989 was the 4.4 percent in the loading of coal, followed by a 2.3 percent increase in grain loading, and a 1.1 percent increase in cars loaded with chemicals.

The average carrying capacity of a freight car placed into rail service during fiscal year 1990 was 97 net tons, an increase of 9 net tons over per-car tonnage figures registered ten years ago. While the aggregate carrying capacity of cars installed was 833,424 net tons, there was an aggregate capacity loss of 1,702,141 net tons owing to the retirement of cars accounting for 2,535,565 net tons capacity.

In fiscal year 1990, there were 6,142,107 trailers/containers loaded, a 3.6 percent increase over fiscal year 1989's total of 5,931,483 similarly loaded trailers/containers.¹⁵⁹

The locomotive ownership of Class I railroads on October 1, 1989, consisted of a total of 19,767 units, while on October 1, 1990, such ownership was up to 19,865 units, a 98 unit increase. At the end of fiscal year 1990, Class I railroads had 111 multipurpose locomotives on order.

Passenger Service

The Commission set terms¹⁶⁰ for Boston and Maine Corporation's (B&M)

¹⁵⁹ Effective January 1, 1989, statistical accounting for TOFC/COFC loadings by flatcar was eliminated by the AAR in favor of accounting for the number of trailer/container units loaded.

¹⁶⁰ *Amtrak—Conveyance of B&M in Conn. River Line in VT and NH*, 6 I.C.C.2d 539 (1990).

retained trackage rights over the 48.8-mile segment of the Connecticut River Line that the Commission ordered B&M to transfer to the National Rail Passenger Corporation (Amtrak)¹⁶¹ under Section 402(d) of the Rail Passenger Service Act.¹⁶² However, the Commission's prior decision¹⁶³ ordering the conveyance of B&M's 48.8-mile line between Windsor and Brattleboro, Vermont, to Amtrak and its subsequent reconveyance to Central Vermont Railway, Inc., was set aside and remanded by a three judge panel for the United States Court of Appeals, District of Columbia Circuit. Amtrak sought to acquire the line to reinstate its Montpelier passenger service. Amtrak discontinued that service in April of 1987 because B&M's track was inadequately maintained and could not support high speed passenger service. The Commission filed a petition on September 24, 1990, for rehearing *en banc*. (See discussion in Chapter on Court Actions.)

The Chicago South Shore and South Bend Railroad's (South Shore) request for discontinuance of service was dismissed because South Shore entered into an agreement with Northern Indiana Commuter Transportation District and the State of Indiana for continued service through the end of 1990.¹⁶⁴ The Commission also dismissed a no-

tice of intention to discontinue service over an .83-mile segment at Newark and Sodus Point, New York, since the segment was included in the carrier's modified certificate of public convenience and necessity.¹⁶⁵

Pursuant to the Commission's request, the United States Court of Appeals for the District of Columbia remanded the Napa Valley Wine Train proceeding to the Commission. At issue is whether the Commission's economic regulation extends to the Wine Train's freight and passenger operations over a 21-mile line in the Napa Valley in California. Following a request for comments, numerous statements from individuals, citizen groups, and economic interests were received. The proceeding was pending at the end of the fiscal year.¹⁶⁶

Designated agents of the Commission's Office of Compliance and Consumer Assistance issued two emergency orders under 45 U.S.C. 562(c) to prevent rail passenger service interruptions and granted permission to Amtrak passenger trains to use alternative routes to reach their destinations.¹⁶⁷ Such orders are issued whenever a railroad company operating an Amtrak train cannot move the train over its normal route and an alternative route exists over the lines of another carrier.

¹⁶¹ *National Railroad Passenger Corporation—Conveyance of Boston and Maine Corporation Interests in Connecticut River Line in Vermont and New Hampshire*, 4 I.C.C.2d 761 (1988).

¹⁶² 45 U.S.C. 501, *et seq.*

¹⁶³ *Amtrak—Conveyance of B&M in Conn. River Line in VT and NH*, 4 I.C.C.2d 768 (1988).

¹⁶⁴ Finance Docket No. 31348, *Chicago South Shore and South Bend Railroad Discontinuance of Passenger Trains Under 49 U.S.C. 10908* (not printed), served December 15, 1989.

¹⁶⁵ Finance Docket No. 29762, *Ontario Midland Railroad Corp.—Notice of Intent to Discontinue Service* (not printed), served January 24, 1990.

¹⁶⁶ Finance Docket No. 31156, *Napa Valley Wine Train, Inc.—Petition for Declaratory Order* (not printed), served April 4, 1990.

¹⁶⁷ *Passenger Train Operation*, I.C.C. Order No. P-108 (not printed), served August 2, 1990, and *Passenger Train Operation*, I.C.C. Order No. P-109 (not printed), served October 29, 1990.

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TRUCKING COMPANIES

Financial Condition

The Nation's largest trucking companies reported decreased earnings during fiscal year 1990, compared to fiscal year 1989, as operating expenses rose more than operating revenues. Earnings declined despite an increase in revenue tons hauled during this period. Comparison of data for nine month periods ending September 30, 1990, and September 30, 1989, for 100 of the largest companies shows that net carrier operating income declined 6.9 percent to \$696.7 million and net income fell 12 percent to \$345.3 million. Also, operating revenues increased 7.2 percent to \$16.1 billion as revenue tons hauled rose 3.1 percent. However, larger earnings declines were reported by this group of carriers during the first three months of fiscal year 1990—from October 1, 1989, to December 31, 1989—compared to the same period of the prior year. A composite net loss of \$3.8 million was incurred during the first three months of fiscal year 1990 compared to a \$114.5 million net income achieved during the same period of fiscal year 1989. Net carrier operating income declined 76 percent to \$54.5 million.¹

Industry analysts believe that trucking rates since January 1, 1990, began to stabilize after a long period of decline. However, the earnings of the motor carriers of property probably will continue to decline in fiscal year 1991, primarily due to the expected downturn in the nation's economy. Fuel cost increases as the result of the crisis in the Persian Gulf and inflationary increases in other operating expenses combined with declining traffic volume would further erode motor carrier profitability.

Besides competitive pressure from other modes, the trucking industry itself remains intensely competitive. Entry and resulting competition among regulated

carriers is particularly noticeable under the deregulatory impetus of the Motor Carrier Act of 1980. ICC operating authority for trucking companies grew from 18,045 in 1980, to 44,414 in 1990.

Figures showing entry by new motor carriers considerably understate the industry's competitive intensity. Commission figures on contract carriage, 48-state operating authority, and brokers paint a more complete picture. Contract authority not only allows carriers to tailor specific service standards to individual shippers, but the fact contract rates need not be filed at the Commission encourages carriers to engage in aggressive price competition to secure shipper business. Although contract authority was once a small percentage of total permits, in 1990 nearly 75 percent of Commission-regulated carriers held both common and contract authority. Similarly, whereas 48-state operating authority was held by only a few carriers in 1980, some 10,000 grants were in effect at the end of 1990. Since 1980, virtually all the major Commission-regulated less-than-truckload (LTL) carriers have obtained 48-state general commodity authority, permitting them to aggressively expand into each other's markets. Finally, the number of Commission-licensed brokers continues to increase dramatically. Brokers perform an important service by matching shippers with carriers, constantly booking freight reservations and generating powerful and beneficial competitive pressures throughout the industry. Prior to 1980, fewer than 100 brokers were licensed by the Commission. Today, there are more than 6,500 licensed brokers, with 9,500 permits outstanding.

Intercity LTL traffic is dominated by larger ICC authorized carriers. While the successful larger carriers increased their share of national LTL revenues over the past decade, these gains were generally being achieved by expansion into new territories rather than through

¹ Financial figures are from *Motor Carrier Quarterly Report Form QFR*.

expansion and increased concentration within their previous markets. Growth in this fashion has intensified competition and benefited the public by increasing the number of efficient carriers available to shippers.

Mergers And Unifications

The Nation's trucking industry continued to use the Commission's expedited exemption and small carrier transfer procedures to transfer operating authority and to effect changes in their financial structure. Appendix B depicts the activity in this area during the 1990 fiscal year.

The Commission has continued to consider safety fitness as a substantive issue in deciding whether to approve a transfer under 49 U.S.C. 10926 or to grant an exemption under 49 U.S.C. 11343(e). During the fiscal year, the Commission adopted on an interim basis, and decided to seek public comment on its intention to implement permanently, a revision to its policy governing the processing of finance petitions and applications filed by trucking companies holding less than satisfactory safety ratings from the U.S. Department of Transportation (DOT).² The new policy imposes 1-year limited term conditions on finance transactions involving acquiring or surviving carriers that do not hold a DOT safety fitness rating. These carriers may have the condition removed upon receiving a satisfactory safety rating this year. The intention of the new policy is to achieve parity with the revised safety policy governing licensing applications that was implemented during the fiscal year.

Prior to the start of the fiscal year, the Commission had determined that, pursuant to 49 U.S.C. 11341(a), its exclusive jurisdiction over motor property finance transactions extends to the transfer of intrastate operating authori-

ties as a part of a broader transaction involving a carrier's interstate rights. During the year, the Commission interpreted and applied its statutory authority in two proceedings involving the transfer of State certificates that contained conditions prohibiting their transfer until the expiration of specified 5-year terms.³ The Commission authorized the transfer of the certificates as part of broader transactions involving the transfer of interstate rights. The Commission rejected the state's position that, in authorizing the transfer, it was modifying the certificates and, therefore, exceeded its statutory authority.

Rates And Rate Bureaus

Under its negotiated rates policy,⁴ the Commission issued decisions in numerous cases involving negotiated but unpublished rates. These cases generally involved efforts by trustees of bankrupt carriers to collect tariff rates in lieu of rates that were negotiated, billed and paid, but not filed with the Commission by the carrier. In the overwhelming majority of these cases, the Commission concluded that negotiated rates existed and that collection of undercharges based on a filed tariff rate would be an unreasonable practice in violation of 49 U.S.C. 10701(a).⁵

³No. MC-F-19568, *Con-Way Southern Express, Inc.—Control and Merger Exemption—Hohenwald Truck Lines, Inc., and McMinnville Freight Line, Inc.* (not printed), served July 30, 1990; and No. MC-F-19616, *Central Transport, Inc.—Purchase Exemption—Brown Transport Corp.* (not printed), served July 30, 1990.

⁴NITL—*Pet. to Inst. Rule on Negotiated Motor Car.*, 3 I.C.C.2d 99 (1986), and 5 I.C.C.2d 623 (1989).

⁵See, e.g., No. 40243, *Freightliner Corporation—Petition for Declaratory Order* (not printed), served May 17, 1990; No. 40233, *Eastman Kodak Company—Petition for Declaratory Order—Certain Rates and Practices of Advance United Expressways, Inc.* (not printed), served February 26, 1990; and No. MC-C-30143, *Utica Packing Company, et al.—Petition for Declaratory Order* (not printed), served January 9, 1990.

²*Transfer Rules*, 7 I.C.C.2d 147 (1990).

On June 21, 1990, the U.S. Supreme Court issued a significant decision that rejected the Commission's negotiated rates policy.⁶ The Court ruled that the Commission's policy was contrary to the language and structure of the statute requiring a carrier to file its rates with the ICC and to charge only those rates that are on file (the filed rate doctrine).⁷ The Court held that while the Commission has jurisdiction to find a rate unreasonable, it may not find it an unreasonable practice for a carrier to do what the statute requires — charge the rate specified in the applicable tariff on file with the Commission. The Court concluded that it was a legislative prerogative to modify or eliminate the filed rate doctrine if strict adherence to the doctrine was an "anachronism."

As the fiscal year closed, legislation was pending in Congress that would have limited or modified application of the filed rate doctrine in negotiated rates cases.⁸ (See Legislative Chapter). Following the *Maislin* decision, the Commission discontinued application of its negotiated rates policy, and numerous proceedings were held in abeyance pending legislative action.

The Commission nevertheless continued to consider other reasonable practice issues involving filed tariffs. In a series of cases involving application of the Commission's credit regulations, the Commission found that the retroactive application by Campbell 66 Express, Inc., of a "loss of discount" tariff provi-

sion, in an effort to collect undercharges, was an unreasonable practice.⁹

During the year, the Commission took action in several proceedings in response to the escalation and volatility in fuel costs. In response to sharply rising fuel costs in the early months of 1990, the Commission adopted an interim rule that permitted motor carriers to independently file fuel-related tariff increases on 3 working days' notice.¹⁰ This rule expired on February 26, 1990, after diesel fuel prices stabilized and even fell to pre-rule levels.¹¹ On August 8, 1990, in response to the Persian Gulf crisis, the Commission reinstituted a three-day short notice filing of fuel-related tariff increases, subject to a September 23, 1990, expiration date.¹² Later, the Commission reduced the notice period to one day.¹³ The Commission subsequently removed the September 23, 1990, expiration date from its short notice filing procedures in view of the likelihood of continuing

⁶See, e.g., No. 40296, *ADM of Mississippi, Inc., and MDA of Mississippi, Inc.—Petition for Declaratory Order—Rates and Practices of Campbell 66 Express, Inc.* (not printed), served June 20, 1990; and No. MC-C-30134, *Thomas J. Lipton, Inc. v. Campbell 66 Express, Inc., and Delta Traffic Service, Inc.* (not printed), served October 31, 1989. The decisions apply findings made near the end of the 1989 fiscal year in No. MC-C-30135, *The Mennen Company v. Campbell 66 Express, Inc., and Delta Traffic Service, Inc.* (not printed), served September 6, 1989.

¹⁰*Three Day Notice Period on Fuel Related Tariff Increases*, 6 I.C.C.2d 348 (1990), adopting a rule at 49 CFR 1312.39(j).

¹¹*Id.*, 6 I.C.C.2d 584 (1990).

¹²Special Tariff Authority No. 90-110, *Three Workdays Notice Period on Fuel Related Tariff Increases* (not printed), served August 8, 1990, granting relief from 49 CFR 1312.39(h)(2).

¹³Special Tariff Authority No. 90-110 (Sub-No. 1), *Petition to Establish an Emergency Fuel Surcharge Program—Petition to Reopen* (not printed), served August 22, 1990.

⁸*Maislin Industries U.S., Inc. v. Primary Steel, Inc.*, 110 S.Ct. 884 (1990).

⁷49 U.S.C. 10762 and 10761.

⁹This legislation was not enacted during the 101st Congress.

price changes for fuel.¹⁴ The Commission declined to allow a reduction in the short notice filing period (beyond the 10-day period authorized) for *collectively filed* fuel related increases.¹⁵

In a case of first impression, the Commission issued an interpretation of 49 U.S.C. 10733 which permits motor property carriers to transport recyclable materials without charge or at a reduced rate.¹⁶ Recyclable materials are statutorily defined as waste products for recycling or reuse in the furtherance of recognized pollution control programs.¹⁷ The Commission found against a shipper that claimed that negotiated reduced rates, rather than filed tariff rates, were applicable to its shipments of recycled discarded textile items. The Commission determined that the shipper's operations, which involve the sale of wiping rags to government and private consumers, do not meet the requirements of a pollution control program.

The Commission declined to institute a proceeding to establish a rule that would require the filing of an application or justification statement when joint rate classification changes are publicly docketed and/or published in the National Motor Freight Classification.¹⁸ The Commission was satisfied

that the National Classification Committee's collective ratemaking procedures, which the Commission has approved, provide a full opportunity for participation by interested parties. The Commission found that it would be unnecessary and impractical to require for each classification change a justification similar to that submitted by rate bureaus for general rate increases.

The Commission initiated a proceeding to conduct a review of the motor carrier ratemaking process, rate bureau activities, discounting, and other related motor carrier issues of importance to both shippers and carriers.¹⁹ This proceeding consolidated for consideration all collective motor carrier general rate increases proposed for application in 1990 for which the Commission had previously ordered investigations. The proceeding is designed as a fact-finding proceeding to assist the Commission in better understanding current pricing practices in all sectors of the motor carrier industry. It is designed as a two-stage process. The initial phase is devoted to development of a factual record concerning coincident pricing practices, and the second phase is devoted to development of findings and conclusions as well as consideration of appropriate remedies and/or sanctions.

In response to its notice instituting this proceeding, the Commission received numerous written comments from the public. In addition, the Commission conducted a full day oral hearing in the matter on September 5, 1990. As the fiscal year closed, the Commission was considering the factual record developed on the motor carrier ratemaking process and its impact on the trucking industry. In view of the

¹⁴Special Tariff Authority No. 90-110, *Three Workdays Notice Period on Fuel Related Tariff Increases* and Special Tariff Authority No. 90-110 (Sub-No. 1), *Petition to Establish an Emergency Fuel Surcharge Program—Petition to Reopen* (not printed), served September 12, 1990.

¹⁵Amendment No. 3 to Special Tariff Authority No. 81-2500, *Fuel Related General Increases on Five Days' Notice*, HGCB, *Petition to Reopen and Reconsider* (not printed), served August 24, 1990.

¹⁶No. MC-C-30163, *Motor Carrier Audit & Collection Co., Inc.—Petition for Declaratory Order—Recyclable Materials Within the Scope of 49 U.S.C. 10733* (not printed), served June 13, 1990.

¹⁷See the definition in *Transportation of "Waste" Products for Reuse*, 114 M.C.C. 92 (1971), 120 M.C.C. 596 (1974), and 124 M.C.C. 583 (1976).

¹⁸Ex Parte No. MC-192, *Advanced Justification for Classification Changes* (not printed), served December 29, 1989.

¹⁹Ex Parte No. MC-196, *Investigation of Motor Carrier Collective Ratemaking and Related Procedures and Practices* (not printed), served July 10, 1990.

pendency of this investigative proceeding, the Commission decided to defer action in several related proceedings that cannot adequately be addressed until the Commission has evaluated the record assembled in the fact-finding proceeding.²⁰

The Commission continued to review collective ratemaking agreements filed under 49 U.S.C. 10706. In one significant decision, the Commission ordered the Household Goods Forwarders Tariff Bureau (Bureau) to show cause why it continued to need antitrust immunity for collective activities.²¹ The Commission's preliminary analysis had led it to question whether the Bureau was engaging in any activities for which antitrust immunity was necessary and proper. The proceeding was pending as the fiscal year closed. In another important decision, the Commission granted provisional approval of the revised collective ratemaking agreement filed by the Machinery Haulers Association (MHA).²² The Commission had previously denied MHA's application for approval of its agreement and revoked its antitrust immunity for collective ratemaking. In another proceeding, the Commission revoked the antitrust immunity of the only re-

maining water carrier rate bureau subject to its jurisdiction in view of the Bureau's voluntary dissolution.²³

The Commission discontinued an investigation of the reasonableness of a 4.8 percent collectively-set general rate increase proposed by the Rocky Mountain Motor Tariff Bureau (RMMTB), and of the lawfulness of independent action revenue increases for carriers that mirrored or were similar to the collective amount proposed.²⁴ The Commission found that the general rate increase was justified and that there was no showing of improper collective action prior to the individual filings, nor any attempt by the rate bureau to improperly influence its members. The same issue is the subject of a petition by the U.S. Department of Justice which seeks revocation of the antitrust immunity of RMMTB for collectively-set general rate increases.²⁵ The Commission included the RMMTB in its investigation into rate making. The Department of Justice petition was pending as the fiscal year closed.

Operating Rights

The Commission's major licensing-related activity was to revise the general licensing form used to apply for motor and water carrier, property broker, and household goods freight forwarder operating authorities.²⁶ The revised Form OP-1 unifies, simplifies, and integrates the information required to obtain permanent, temporary, and emergency temporary operating authorities. The Commission's decision adopting this comprehensive licensing

²⁰ Ex Parte No. MC-180 (Sub-No. 1), *Petition for Rulemaking—Discounting Practices*, No. MC-C-30029, *Andrews Van Lines, Inc., et al.—Petition for Declaratory Order*, No. MC-C-30117, *Regular Common Carrier Conference—Petition for Declaratory Order—Range of Discounts and Customer Account Codes*, and *Investigation and Suspension* Docket No. M-30419, *Consolidated Freightways Corporation—Negotiated Rates Provisions* (not printed), served September 4, 1990; and Ex Parte No. MC-195, *Petition of Regular Common Carrier Conference for Establishment of Minimum Rate Standard and Other Relief* (not printed), served August 8, 1990.

²¹ Section 5a Application No. 106, *Household Goods Forwarders Tariff Bureau* (not printed), served November 28, 1989.

²² Section 5a Application No. 58, *Machinery Haulers Association* (not printed), served April 13, 1990.

²³ Section 5a Application No. 32, *Columbia River Tariff Bureau—Agreement* (not printed), served February 20, 1990.

²⁴ No. 40212, *General Increase, RMMTB*, February 27, 1989 (not printed), served January 10, 1990.

²⁵ No. 40396, *DOJ Petition—Rocky Mountain Carriers*, filed December 19, 1989.

²⁶ *Rules Governing Applications for Operating Authority*, 6 I.C.C.2d 266 (1989).

form also announced corresponding revisions to the regulations governing licensing procedures.²⁷

The revision of the Form OP-1 represents the first comprehensive effort since implementation of the Motor Carrier Act of 1980 to streamline, simplify, and rationalize the licensing process. The Commission adopted revisions that reflect its experience since 1980 with a largely unprotested licensing docket. Accordingly, the new application procedures facilitate entry, rather than reflect concern with managing contested application proceedings. The new application form and accompanying instructions represent a "user friendly" document that permits self-guidance through the application process, requires minimal narrative responses, and significantly reduces the estimated response time required. At the same time, the simplified form and accompanying instructions will greatly reduce the amount of staff follow-up time required to confer with applicants to correct response deficiencies.

In a proceeding that commenced in fiscal year 1989 in response to a petition by a carrier whose operations between points in Pennsylvania had been challenged by a State agency as being unauthorized, intrastate transportation, the Commission issued a significant interpretative decision in a declaratory order.²⁸ Two categories of shipments were involved. The first involved traffic moved between points in Pennsylvania through consolidation terminals petitioner had established in other States (i.e., hub-and-spoke traffic). The Commission considered this traffic in light of established criteria²⁹ and found that the

petitioner's hub-and-spoke operating pattern in general was valid under its interstate operating authority, except to the extent petitioner: (1) served, through an out-of-State terminal, points located substantially closer to a terminal within Pennsylvania; or (2) conducted line-haul operations between two terminals in Pennsylvania over a circuitous routing through another State.

The second category involved pool distribution traffic and warehouse traffic transported within Pennsylvania subsequent to movement from out-of-State origins. The Commission considered this category of traffic in light of established principles³⁰ and concluded that, where the inbound shipments are arranged by the shipper involved, the subsequent transportation is in interstate commerce if individual shipments are designated for particular customers at the time of the original interstate movement or the shipments are re-consigned to particular customers by the shipper at its Pennsylvania distribution centers. The Commission found, however, that when the original shipment is to a public warehouse, the warehouse reships the goods, and there is no continuing direction from the shipper, there is not the requisite fixed and persisting shipper intent that the goods continue movement in interstate commerce.

In another decision, the Commission found that the inland movement of merchandise imported from the Far East to California ports aboard regulated ocean carriers, briefly held in a California warehouse, and then tendered to Commission-regulated carriers for transportation to California destinations, is in foreign commerce subject to Com-

²⁷ 49 CFR Parts 1160, 1162, and 1168, and the list of forms in 49 CFR Part 1003.

²⁸ No. MC-C-30129, *Pittsburgh-Johnstown-Altoona Express, Inc.—Petition for Declaratory Order* (not printed), served February 12, 1990.

²⁹ *Pennsylvania P.U.C. v. Arrow Carrier Corp.*, 113 M.C.C. 213 (1971).

³⁰ *Armstrong, Inc.—Transportation within Texas*, 2 I.C.C.2d 63 (1986), *aff'd sub nom. Texas v. United States*, 866 F.2d 1546 (5th Cir. 1989).

mission regulation.³¹ Although the ultimate destinations of the merchandise are not known before the ocean carrier departs from the Far East, the destinations are determined for 70 percent before, and for the remainder after, arrival at the distribution facility. As it is the fixed and persisting intent of the shipper at the time of the shipment that the merchandise move beyond the warehouse facilities, the Commission held that both types of traffic move in foreign commerce, particularly since no activity takes place at the warehouse that would change the character of any shipments.

In another case,³² steel purchased abroad moved via steamship to port, was unloaded at the docks under a broker's control, moved by unregulated drayage from the docks to a shipper's warehouse located in the port area, and then moved by motor carrier to the shipper's facilities in the same State. The shipper had negotiated an interstate rate with the motor carrier but was later billed for the difference between the interstate rate paid and the corresponding intrastate rate. The Commission found that, based on their "essential character", the involved shipments had moved in continuous foreign commerce, and the intrastate rate was not applicable. From the time of the purchase contract, through every step of the steel movement, it was the shipper's fixed intent that the shipments move directly from the point of foreign manufacture to its own facilities. The temporary storage at the port warehouse did not break the continuity of the movement.

During the year, the Commission discontinued a proposal to eliminate its vehicle identification regulations at 49 CFR 1058.³³ An overwhelming majority of participants responding to the notice of proposed rulemaking³⁴ opposed elimination of the identification requirement and convinced the Commission that the regulations should be retained.

The Commission also discontinued a proposal to eliminate its cargo liability insurance regulations at 49 CFR 1043. An overwhelming majority of participants opposed removal of the cargo liability requirement and convinced the Commission that the regulations should be maintained.³⁵

When the fiscal year began, the Commission was considering public comments that had been submitted in response to its proposal to expand the territorial scope of commercial zones and terminal areas.³⁶ At a voting conference held August 14, 1990, the Commission decided to update and eliminate surplus citations in the regulations but otherwise to dismiss the proceeding.³⁷ The Commission also decided to await the results of the 1990 census before considering any new rules. The proceeding was pending as the fiscal year closed.

Safety

Motor carrier safety continues to be a primary concern when the Commission evaluates the fitness of an applicant for new or expanded authority. Consistent with the intent of the Motor

³¹ No. MC-C-30146, *The May Department Stores Company and Volume Shoes Corporation—Petition for Declaratory Order—Transportation Within Single State of Merchandise Imported by Water* (not printed), served June 15, 1990.

³² No. MC-C-30152, *Willbanks Steel Corporation v. The Squaw Transit Company and Motor Carrier Audit & Collection Co., a Division of Delta Traffic Service, Inc.* (not printed), served October 27, 1989.

³³ Ex Parte No. MC-41 (Sub-No. 1), *Identification of Motor Vehicles* (not printed), served July 10, 1990.

³⁴ *Id.* (not printed), served November 28, 1989.

³⁵ Ex Parte No. MC-5 (Sub-No. 10), *Removal of Regulations Governing Cargo Liability* (not printed), served May 3, 1990.

³⁶ Ex Parte No. 37 (Sub-No. 40), *Commercial Zones and Terminal areas* (not printed), served April 26, 1987.

³⁷ *Id.*, 7 I.C.C.2d (1990).

Carrier Safety Act of 1984,³⁸ the Commission continued its efforts to identify motor carriers with questionable safety records and to scrutinize the safety profiles of applicants seeking authority.

During the year, the Commission modified the policy it had adopted in fiscal year 1989 governing the submission and evaluation of safety fitness evidence in motor carrier licensing proceedings.³⁹ Under the previously established policy, (1) all applications filed by carriers holding unsatisfactory U.S. Department of Transportation (DOT) safety ratings are rejected; (2) all applications by conditional-rated carriers seeking authority to transport passengers or hazardous materials also are rejected; and (3) all other applications filed by carriers with conditional ratings are reviewed on a case-by-case basis and either approved, subject to a 1-year term, or denied. The Commission revised the policy to the extent it had permitted granting unconditioned authority to carriers (generally new entrants) that had no DOT safety ratings. Under the amended policy, the Commission will impose 1-year term limitations on grants of authority to unrated carriers.⁴⁰ If, in a particular situation, DOT is unable to rate a carrier within the 1-year term, the carrier may petition to have its authority extended for an additional year until the rating has been assigned.

In another policy revision, the Commission decided that, to ensure that carriers with conditional ratings operate only within the scope of their authorities as intended by the safety policy, all 1-year term certificates and permits would be issued with hazardous commodities exceptions.⁴¹ Under the revised policy,

upon receipt of a satisfactory safety rating within the limited term, a carrier may petition to have the commodity service exception removed at the same time that the term limitation is removed.

During the fiscal year, the Commission adopted a liberal policy and created a sample fill-in petition form to enable existing carriers to modify their authorities to exclude hazardous materials from the commodity authorizations. The actions were precipitated by the State of Indiana's refusal to issue tax payment stamps to carriers desiring to operate in or through the State until such carriers either, (1) exclude hazardous commodities from their interstate operating authorities, or (2) file evidence of appropriate \$1 million or \$5 million in insurance covering hazardous materials transportation. The State will not accept affidavits or other evidence from carriers showing that they do not transport hazardous commodities under their unrestricted authorities. The Commission is not requiring filing fees for the petitions.

In a related matter, the Commission modified its licensing policy to exclude hazardous materials from motor property carrier operating authorities, unless applicants specifically request this authority and demonstrate: (1) their fitness, willingness, and ability to transport hazardous materials; and (2) that such service would be responsive to a public demand or need (common carrier authority) or consistent with the public interest (contract carrier authority).⁴² Under the new policy, those applicants that affirmatively seek and make the requisite evidentiary showings to transport hazardous materials must specify whether their service will embrace all hazardous materials (requiring \$5 million in liability insurance coverage) or only those specific haz-

³⁸ Public Law No. 98-554 (October 11, 1984).

³⁹ *Safety Fitness Evidence—Licensing Procedures*, 5 I.C.C.2d 94 (1988).

⁴⁰ *Rules Governing Applications for Operating Authority*, 6 I.C.C.2d 266, 281-282 (1989).

⁴¹ *Id.*, at 288.

⁴² *Rules Governing Appls. for Oper. Auth.—Rev. of Form OP-1*, 6 I.C.C.2d 675 (1990).

ardous materials requiring insurance coverage of \$1 million.⁴³

The Commission also continued to treat safety fitness as a substantive issue for consideration in determining whether to approve transfers under 49 U.S.C. 10926 and to grant exemptions under 49 U.S.C. 11343(e) for the purchase or merger of motor carrier authority. See the "Mergers and Unifications" section, for additional discussion of the Commission's policy in this area.

Foreign Carriers

During fiscal year 1990, the Commission adopted final rules⁴⁴ and modified Form OP-2 governing applications for certificates of registration (CR) for certain foreign carriers.⁴⁵ The rules implement changes in the statutory requirements⁴⁶ enacted as part of the Truck and Bus Safety and Regulatory Reform Act of 1988.⁴⁷ The Act expanded the coverage of the registration requirement, but eliminated the requirement for annual registration. Previously, carriers operating under lease to U.S. carriers or shippers (in the case of private carriage) were not covered by the registration requirement. The 1988 Act eliminated this exemption. The 1988 Act also expanded significantly the type of transportation requiring registration to include for-hire foreign motor carriers of non-exempt commodities (most significantly, manufactured goods from maquiladora plants in Mexico into U.S. border commercial zones).

As part of its revisions, the Commission shortened the period during which the Department of Transportation may intervene in a CR proceeding from

30 days to 20 days. This change should have no impact on DOT but could shorten the processing time for applications. The Commission redesigned the OP-2 application form to eliminate the request for unnecessary information and make it easier to read and understand. The Commission later modified its final rules and Form OP-2, (1) to accommodate DOT's adoption of a rule allowing trip insurance for Mexican carriers, and (2) to implement the Commission's newly adopted anti-drug certification requirement for motor carrier applicants.⁴⁸

In regard to the DOT trip-insurance rule, the Commission also amended its regulations⁴⁹ governing financial responsibility requirements for certain foreign motor carriers and Mexican motor private carriers operating under certificates of registration.⁵⁰ Under the revised rules, Mexican carriers may comply with insurance requirements by purchasing trip insurance instead of certifying evidence of insurance on the usual forms. Although Mexican carriers will no longer be required to file evidence of insurance with the Commission, they will be required to have evidence of insurance in each vehicle operating in the United States.

Insurance

The Interstate Commerce Commission requires all regulated transportation entities to file with the Commission and to maintain on a continuing basis evidence of financial responsibility at the required minimum Federal limits. Motor carriers and freight forwarders can meet these requirements by filing certificates of insurance, surety bonds, proof of qualification to self-insure, or other securities or agreements in the amounts prescribed.

⁴³ 49 CFR 1043.2(b)(2).

⁴⁴ 49 CFR 1171.

⁴⁵ *Certificates of Registration—Certain Foreign Carriers*, 6 I.C.C.2d 135 (1989).

⁴⁶ 49 U.S.C. 10530 and 10922(f).

⁴⁷ Enacted as Title IX, Subtitle B, of the Anti-Drug Abuse Act of 1988, Public Law No. 100-690, 102 Stat. 4181.

⁴⁸ *Certificates of Registration—Certain Foreign Carriers*, 6 I.C.C.2d 251 (1989).

⁴⁹ 49 CFR 1043.2(b)(4).

⁵⁰ *Foreign Mot. Private Cars, Evidence of Insurance*, 6 I.C.C.2d 261 (1989).

Property brokers subject to the Commission's regulations can meet these financial responsibility requirements by filing either surety bonds or trust fund agreements in the amount of \$10,000.

During fiscal year 1990, the Commission received a total of 87,590 insurance filings. These filings included 48,804 bodily injury and property damage and cargo liability certificates of insurance, 1,706 property broker surety bonds, and 268 property broker trust fund agreements, as well as 36,812 notices of cancellation. These notices of cancellation resulted in 35,702 actions by the Revocation Board, and the subsequent involuntary revocation of the operating authorities of 4,221 regulated transportation entities. Additionally, the operating authorities of 338 carriers were voluntarily revoked.

During fiscal year 1990, the Commission's Insurance Board granted waivers of bodily injury and property damage insurance requirements to 21 freight forwarders of household goods. These waivers are conditional, and are valid only as long as the forwarders maintain in their tariffs, provisions that they do not own or operate any motor vehicles upon the highways in the transportation of property; they do not perform transfer, collection or delivery services; and that no motor vehicles are operated under their direction and control in the performance of transfer, collection and delivery service subject to Subchapter IV, Chapter 105, Subtitle IV of Title 49 of the United States Code.

The Commission continued to review applications filed by motor carriers for authority to self-insure their bodily injury and property damage and/or cargo insurance. During fiscal year 1990, the Commission granted three self-insurance application requests. Self-insured carriers are required to file periodic financial and claims reports and the Commission maintains a comprehensive monitoring program to en-

sure that the public is protected in the event of accidents or negligence on the part of the self-insured carriers.

Household Goods

During the 1990 fiscal year, the Commission adopted a new rule⁵¹ that permits motor common carriers of household goods to limit their liability for loss or damage to articles of extraordinary value.⁵² The new rule assists carriers while meeting the Commission's insistence that the public be fully protected and that members of the public be able to understand which goods are included under the general terms "extraordinary" or "unusual" value.

The new rule provides, in essence, that when a shipment is released to a value greater than 60¢ per pound, per article, the carrier may limit its liability to \$100 per pound, per article, for any article included in the shipment that exceeds \$100 per pound, per article in value, unless the shipper specifically notifies the carrier in writing that an identified article or articles of greater value will be included. In that case, the shipper will be entitled to full recovery, up to the declared value of the article or articles not to exceed the declared value of the entire shipment. The Commission's decision adopting the rule require that any released rate order proposed by a household goods carrier, that contains such a limitation of liability, explain how the public is to be given notice of the need to list such items. The orders also must make provision for listing of such articles on the carrier's bill of lading or on a separate form incorporated by reference.

Near the end of the fiscal year, in response to a petition by the American Movers Conference (AMC), the Commis-

⁵¹ See 49 CFR 1056.12(b)(2).

⁵² *Practices of Motor Common Carriers of Household Goods*, 6 I.C.C.2d 666 (1990), and 6 I.C.C.2d 850 (1990).

sion instituted a declaratory order proceeding to clarify whether 49 U.S.C. 11910(a)(2) precludes the disclosure of shipper information in a consumer marketing and research program AMC intends to initiate.⁵³ Section 11910(a)(2) generally provides that a motor carrier may not, without shipper consent, knowingly disclose information about the nature or routing of property tendered for transportation. To facilitate its program, AMC will be requesting member carriers voluntarily to provide the names and addresses of individual shippers. In requesting comments on the issues raised by the petition, the Commission noted that the statute permits disclosure of shipper information, without shipper consent, if there will be no detriment to the shipper and no harm to the shipper's business interests. The proceeding was pending as the fiscal year closed.

Prior to the beginning of the fiscal year, the Commission had instituted a declaratory order proceeding to review

the broad question of the lawfulness of those household goods discount tariffs that contain a range of discounts. The Commission also wanted to consider the effect of binding estimate authority on the lawfulness of such tariffs.⁵⁴ During the year, however, the Commission instituted a fact-finding investigation into motor carrier ratemaking practices.⁵⁵ In view of the pendency of the fact-finding proceeding, which will fully explore the issue of carrier discounting, the Commission decided to defer action on the declaratory order proceeding.⁵⁶

The number of complaints received against household goods carriers during fiscal year 1990 declined to a new record-low from those received in any fiscal year since passage of the Household Goods Transportation Act of 1980. This year's data represent an 18 percent reduction from the prior fiscal year and an 8 percent reduction from complaints received during fiscal year 1988, the previous record-low year.

⁵³No. MC-C-30174, *Petition for Declaratory Order—American Movers Conference Consumer Marketing and Research Program—Section 11910(a)(2)* (not printed), served September 6, 1990.

⁵⁴No. MC-C-30029, *Andrews Van Lines, Inc., et al. — Petition for Declaratory Order* (not printed), served July 10, 1987.

⁵⁵No. MC-196, *Investigation of Motor Carrier Collective Ratemaking and Related Procedures and Practices* (not printed), served July 10, 1990.

⁵⁶No. MC-C-30029, *supra* (not printed), served September 4, 1990.



BUS COMPANIES

Financial Condition

Greyhound Lines, Inc. (Greyhound), the predominant company in the intercity bus industry and the Nation's only transcontinental bus company, accounts for more than 75 percent of the revenues generated by all Class I bus companies.

As the result of a strike, which began on March 2, 1990, Greyhound reported large declines in revenues, earnings and ridership during the first nine months of calendar year 1990 compared to the same period of 1989. Compared to the first nine months of 1989, operating revenues for the first nine months of 1990 and revenue passengers carried both declined about 32 percent. Net carrier operating loss for the first nine months of 1990 was \$75.6 million compared to a \$50 million profit for the same period of 1989. Net loss, which includes interest expense attributable to debt incurred to acquire the operations of Trailways in 1987, rose to \$108.8 million during the first nine months of 1990, from a \$9.3 million profit during the comparable period of 1989.¹

Due to deterioration in its financial condition, Greyhound, on June 4, 1990, filed for bankruptcy pursuant to Chapter 11 of the Federal Bankruptcy Code. Greyhound was able to maintain an adequate cash position through the end of fiscal year 1990 while under Chapter 11, since it was able to defer payments on most pre-bankruptcy debt including the debt incurred to acquire Trailways. However, due to the limited time period of bankruptcy operations, it was uncertain as of the end of the fiscal year, as to whether Greyhound would be able to reorganize and emerge successfully from bankruptcy. Greyhound planned to file a reorganization plan with the bankruptcy court on November 19, 1990.

As a result of Greyhound's bankruptcy, the Commission reviewed its self-insurance authorization and made certain revisions and amendments to the authorization.² Greyhound was authorized to continue to self-insure at a \$1.5 million level rather than the \$5 million level of the original February 16, 1989 order authorizing self-insurance. The Commission is closely monitoring the status of the self-insurance program and the financial condition of the carrier.

Operating Rights

During fiscal year 1990, the Commission considered a substantial number of motor carrier applications for authority to transport passengers. (See Appendix B, Table 1). Most of the common carrier applicants, and nearly all of the contract carrier applicants, sought authority to conduct charter and special operations, and the remainder sought authority to provide scheduled service over specified routes. The Commission considered a number of cases under its procedures for preempting State regulation in implementing its mandate for advancing the goals of the national transportation policy as applied to passenger carriers.

In a series of significant decisions in the exit area,³ the Commission approved the abandonment by Greyhound of passenger and package express services along eight unprofitable routes in five States: Kansas (2), Wyoming (1), Georgia (2), North Carolina (2), and Ten-

¹ Data are obtained from quarterly reports filed by Class I motor carriers of passengers.

² No. MC-1515, *Greyhound Lines, Inc., and GLI Acquisition Company—Show Cause Order*, (not printed), served June 6, 1990 and June 27, 1990.

³ 49 U.S.C. 10935, enacted in Section 16 of the Bus Regulatory Reform Act of 1982, Public Law 97-261, 96 Stat. 1102 (1982).

nessee (1).⁴ The Commission, considering petitions by Greyhound for review of the respective State agencies' actions denying permission to abandon the involved routes, found, in each case, that the variable costs of providing the involved services exceeded the revenues derived from them,⁵ that patronage along the routes was low, that alternative passenger and package service was available, and that no financial assistance had been offered.

In another situation involving Commission preemption of State regulation, the Commission considered a complaint concerning intrastate passenger carrier service conducted under an ICC certificate.⁶ Under the law and Commission precedent, intrastate regular-route passenger authority granted according to the preemption provision is subject to a condition that a carrier provide substantial, *bona fide*, regularly scheduled interstate service on the involved route.⁷ In the proceeding, the Commission considered allegations that the company was providing intrastate service between hotels in New Jersey and Newark International Airport, at Newark, New Jersey, pursuant to an interstate certificate obtained to circumvent the requirement for obtaining the requisite intrastate license for the service. The Commission found that the defendant

was conducting substantial interstate operations, and that, thus, the assailed intrastate operations were properly conducted.⁸ The Commission applied these same statutory and policy considerations in two licensing cases, affirming the denial of interstate and intrastate authority in one⁹ and affirming a grant of such authority subsequent to court remand in another.¹⁰

In a rulemaking proceeding, the Commission revised its regulations in 49 CFR 1054 governing motor passenger carriers' exercise of incidental charter rights.¹¹ The revised rules simplify and broaden somewhat the former rules, which had become practically obsolete as a consequence of the statutory amendments of The Bus Regulatory Reform Act of 1982. The revised rules, among other things, broaden the territorial scope of existing incidental charter rights to permit service between all points in the United States (including Alaska and Hawaii). This revision relieves carriers from the burdens of interpreting present case law governing the scope of operations permitted. Among obsolete requirements eliminated are provisions prohibiting certain one-way return movements.

Rates

Two carriers filed petitions under the Commission's procedures¹² for preempting State rate jurisdiction and au-

⁴Respectively, Nos. MC-1515 (Sub-No. 404), *Greyhound Lines, Inc., Exit Petition—Kansas* (not printed), served March 22, 1990, (appeal denied by decision served June 26, 1990); MC-1515 (Sub-No. 405), *Greyhound Lines, Inc., Exit Petition—Wyoming* (not printed), served April 12, 1990; MC-1515 (Sub-No. 406), *Greyhound Lines, Inc., Exit Petition—Georgia* (not printed), served April 27, 1990; MC-1515 (Sub-No. 407), *Greyhound Lines, Inc., Exit Petition—North Carolina* (not printed), served May 22, 1990; and MC-1515 (Sub-No. 408), *Greyhound Lines, Inc., Exit Petition—Tennessee* (not printed), served July 9, 1990.

⁵Collectively, variable costs for the involved routes exceeded revenues by \$538,564, an average of \$67,320 a route.

⁶See 49 U.S.C. 10922(c)(2)(B).

⁷49 U.S.C. 10922(c)(2)(J).

⁸No. MC-C-30165, *Salem Transportation Co. of New Jersey, Inc. v. Princeton Airport, Inc.* (not printed), served March 26, 1990.

⁹No. MC-213566 (Sub-No. 1), *Michelle Long, D/B/A Strip Transportation Co., Regular-Route Passenger Service* (not printed), served December 19, 1989, affirming denial of the application in a prior decision served June 9, 1989.

¹⁰No. MC-190567, *Collins Coaches Ltd. Common Carrier Application* (not printed), decision on further proceedings following court remand served December 12, 1989.

¹¹*Incidental Charter Rights—Simplification of Regulations*, 61 C.C.2d 159 (1989).

¹²See 49 CFR 1143.

thorizing intrastate rate increases in situations in which a State had denied, or failed to consider a request for, such increases. In one case, the Commission found that the Massachusetts Department of Public Utilities had neither issued a timely decision on the original application, nor filed an answer to a petition for review.¹³ The company had shown that its intrastate passenger fares were significantly lower than its current interstate fares for comparable services within the State. As required by law,¹⁴ the Commission granted the company permission to increase its intrastate fares as proposed. The second case was pending as the fiscal year closed.¹⁵

Service

The Commission proposed to revise its regulations at 49 CFR 1061 limiting smoking on interstate passenger-carrying motor vehicles.¹⁶ The proposed regulations would prohibit smoking (including the carrying of lit cigars, cigarettes, and pipes) on vehicles transporting passengers in scheduled or special service in interstate commerce. The prohibition also would apply to charter operations as defined in 49 CFR 1054.2. This proceeding was pending as the fiscal year closed.

During the fiscal year, 231 complaints were received by the Commission from passengers utilizing intercity passenger service. These figures represent a 34 percent decrease from the number of similar complaints (347) received in the prior fiscal year. The majority of the complaints against passenger carriers involved failures to provide scheduled service; delays in providing service in accordance with published operating schedules; service provided by unauthorized carriers; and occasional in-transit service failures, such as equipment breakdowns. There were 22 complaints involving passenger carriers' handling of parcels, luggage, and small shipments.

Thirty nine of the complaints received involved overcharges in connection with tariff rates or charges, and 55 complaints involved dissatisfaction with the handling and processing of claims.

The Commission continued its program of passenger carrier inspections at tourist attractions and recreational centers during the year to determine compliance with the ICC's insurance and licensing regulations. This program consisted of 13 road checks and resulted in the inspection of 442 passenger vehicles. Most instances of non-compliance discovered were corrected by voluntary discontinuance of service until operating authority was secured and evidence of insurance was filed with the Commission. In some instances, noncompliance with insurance regulations required enforcement actions which resulted in 152 consent agreements, 30 civil injunctions, and a civil contempt action. Other enforcement actions against motor passenger carriers for violations other than insurance resulted in three civil injunctions and four civil forfeiture actions. In addition, the Commission's monitoring activities included 18 compliance audits of bus companies.

¹³No. MC-C-30171, *Peter Pan Bus Lines, Inc.—Petition for Review—Massachusetts Intrastate Rates* (not printed), served December 19, 1989.

¹⁴See 49 U.S.C. 11501(e).

¹⁵Docketed as No. MC-C-30176, *Bonanza Bus Lines, Inc.—Petition for Review—Massachusetts Intrastate Rates*.

¹⁶Ex Parte No. MC-194, *American Bus Association and United Bus Owners of America—Petition for Rulemaking—Prohibition Against Smoking on Interstate Motor Passenger Carrier Vehicles and Action on Smoking and Health—Petition for Rulemaking—Prohibition against Smoking on Interstate Motor Passenger Carrier Vehicles* (not printed), served September 10, 1990.

FREIGHT FORWARDERS, WATER CARRIERS, AND PROPERTY BROKERS

Freight Forwarders

In view of the Commission's limited residual jurisdiction in the nonhousehold goods freight forwarding industry, there was little Commission activity in this area during fiscal year 1990. The Commission continued to license household goods freight forwarders during the year, as indicated in Appendix B, Table 1, but it did not issue any decisions significantly affecting their operations.

Water Carriers

Under the law, the Commission has no jurisdiction over ferry transportation unless it makes a specific finding that exercise of its jurisdiction is necessary to carry out the national transportation policy.¹ During the past fiscal year, in a court-remanded proceeding, the Commission issued a decision interpreting the scope of the ferry exemption.²

In its decision, the Commission discussed the history of the statutory ferry exemption and addressed issues concerning the directness of the route, the character and frequency of service, and the distance of the route. The Commission found that the proposed operation was a ferry service. It based its finding on a conclusion that prior decisions, to the extent that they may have arbitrarily

limited the permissible length of a ferry route, misconstrued the significance of distance and, therefore, interpreted the definition of a ferry too rigidly. The Commission found that what is important is whether the service at issue acts as a public highway connecting two points separated by water.

The Commission examined the operations of the only remaining water carrier rate bureau conducting operations subject to the Commission's jurisdiction.³ The Commission found that all outward indications suggested that the bureau had ceased to conduct meaningful operations as a rate bureau. Subsequently, with the bureau's acquiescence, the Commission dismissed the bureau's pending application for approval of its amended collective rate-making agreement, revoked its antitrust immunity, and directed it to cease and desist from engaging in any interstate collective ratemaking activity.

Property Brokers

Although transportation brokerage continued to be a significant growth area throughout fiscal year 1990, the Commission did not issue any decisions materially affecting property brokers or reflecting new or changed policies regarding regulation of their operations.

¹ 49 U.S.C. 10544(a)(4).

² *Viking Starship, Inc.—Common Carrier Application*, 6 I.C.C.2d 228 (1989). Petition for review pending *sub nom.* *Cross-Sound Ferry Services, Inc. v. ICC*, No. 90-1053 (D.C. Cir.).

³ Section 5a Application No. 32, *Columbia River Tariff Bureau* (not printed), decisions served November 28, 1989, and February 20, 1990.

INTERMODAL TRANSPORTATION

The Commission extended its exemption of trailer-on-flatcar (TOFC) or container-on-flatcar (COFC) operations to include independent motor pickup and delivery service arranged by or for the shipper in connection with the railroad long-haul of the trailer or container.¹ In 1981, the Commission exempted TOFC/COFC operations performed over rail lines and over the highway in railroad-owned trucks,² and in 1987 it exempted motor TOFC/COFC services provided under joint rate or agency arrangements with railroads.³ These earlier exemptions, the Commission found, had freed railroads in a highly competitive market from unnecessary economic regulation. But, because the earlier exemptions were limited, the Commission concluded that a further exemption would be necessary to promote intermodalism to the fullest extent possible.

Two intermodal common control transactions were authorized through exemptions. Blackstone Capital Partners L.P., which controlled certain Class II and III railroads and two water carriers, was authorized to acquire control of CNW Corporation (CNW) and CNW's subsidiaries, notably the rail carrier, Chicago and North Western Transportation Company.⁴ Lafarge Corporation, which owns three motor carriers, was authorized to acquire indirect control of Western Rail Road Company, which owned 1.9 miles of track, extending from a quarry in Comal County, Texas, and extending to a connection of the Missouri Pacific Railroad Company.⁵

In a decision involving statutory issues of first impression, the Commission determined that it has jurisdiction over equipment free time and demurrage rules and charges published by carriers in tariffs covering joint motor-water transportation between the mainland United States and terminals in Puerto Rican ports.⁶ The Commission found it irrelevant to the jurisdictional issue that the consignee might exercise its privilege to use the carrier's equipment away from its terminal. The Commission vacated a prior decision finding that detention charges assessed in Puerto Rico pursuant to such tariffs were related to local Puerto Rican services.⁷

Prior to the beginning of the 1989 fiscal year, the Commission had determined that it has exclusive jurisdiction to regulate both the water and motor segments of certain joint, through movements between Puerto Rico and inland points in the United States.⁸ During that fiscal year, however, a water common carrier and its motor carrier subsidiary petitioned the Commission after a complaint challenging the nature of their service between Puerto Rico and the U.S. had been filed with the Federal Maritime Commission. As a result, the Commission instituted a declaratory order proceeding to determine: (1) whether the Commission has primary and exclusive jurisdiction to judge the lawfulness of tariffs filed with it so that a petitioner challenging the nature of the service provided under that tariff must do so before the Commission, and (2) whether the particular service is truly a through intermodal service subject to the Commission's jurisdiction.

¹Improvement of TOFC/COFC Regulations (Pickup and Delivery), 6 I.C.C.2d 208 (1989).

²Improvement of TOFC/COFC Regulation, 364 I.C.C. 731, *aff'd*, *American Trucking Associations v. ICC*, 656 F.2d 1115 (5th Cir. 1981).

³Improvement of TOFC/COFC Regulations, 3 I.C.C.2d 869 (1987).

⁴Blackstone Cap. Partners—Cont. Exempt.—CNW Corp. et al., 5 I.C.C.2d 1015 (1989).

⁵Finance Docket No. 31679, *Lafarge Corporation—Control Exemption—Western Rail Road Company* (not printed), served June 8, 1990.

⁶*Puerto Rico Frgt. Sys., Inc. v. Trailer Marine Trans. Corp.*, 6 I.C.C.2d 337 (1989).

⁷No. MC-C-30098, *Puerto Rico Freight System, Inc. v. Trailer Marine Transport Corporation* (not printed), served December 5, 1988.

⁸No. MC-C-30017, *Valley Freight Systems, Inc. v. Trailer Marine Transport Corporation* (not printed), served July 25, 1988.

tion.⁹ The Commission considered the matter at an open voting conference on June 5, 1990. The Commission decided that it has jurisdiction to rule on the lawfulness of tariffs filed with the Commis-

sion and further that the service at issue in the proceeding is not subject to ICC jurisdiction. The Commission's written decision had not been issued at the close of the fiscal year.

⁹No. MC-C-30168, *Puerto Rico Maritime Shipping Authority and PRMMI Trucking, Inc.—Petition for Declaratory Order* (not printed), served August 3, 1989.

ENERGY AND ENVIRONMENT

Energy and environmental issues are addressed by the Section of Energy and Environment (SEE) within the Commission's Office of Economics. SEE fulfills its responsibilities primarily through its independent environmental review of cases, preparation of environmental assessments and environmental impact statements, and advice to the Commission on environmental matters in its decisionmaking. During fiscal year 1990, SEE prepared approximately 300 environmental documents for cases that included railroad abandonments, acquisitions, and constructions.

In conducting its environmental review, SEE examines the impacts of proposed actions on the environment and recommends conditions to mitigate the environmental impacts. In so doing, SEE considers the requirements of the National Environmental Policy Act (NEPA),¹ the National Historic Preservation Act,² the Endangered Species Act,³ the Coastal Zone Management Act,⁴ the Clean Water Act,⁵ and other pertinent environmental statutes. SEE works closely with various Federal and State agencies to ensure that environmental impacts are fully considered and effective mitigation is imposed. Conditions that have been imposed by the Commission in the past year to protect the environment have generally pertained to the protection of water resources, historic resources, threatened or endangered species, public safety, and land use.

Rulemaking

During the past fiscal year, the Commission proposed to revise its en-

vironmental rules.⁶ The proposed changes would refine, clarify, and update the Commission's environmental review process. Specifically, the proposed rules would combine the separate regulations currently implementing the National Environmental Policy Act and the Energy Policy and Conservation Act; revise and clarify the information carriers must supply in their environmental reports; provide for service of environmental reports on various State, Federal and local agencies; eliminate unnecessary requirements; and reclassify and clarify the types of actions that require environmental and/or historic reports and analyses.

Through the issuance of revised environmental rules, the Commission should be able to expedite the consideration of environmental issues. Currently, the process of independently assessing the historic and environmental impacts of a proposed carrier action is often not compatible with the Commission's statutory time frames for deciding many cases, especially where SEE must rely on other agencies that are not subject to the Commission's internal and statutory time deadlines in conducting their evaluation.

Rail Line Constructions

A dramatic increase in rail construction activity has occurred during the past fiscal year. This activity has been unprecedented. Normally, the Commission processes an average of about one construction application a year. This fiscal year approximately nine construction filings have been made with the Commission, all of which require environmental review. These construction filings vary in purpose and size.

Some are relatively small projects. Three involve the construction of con-

¹ 42 U.S.C. 4331-4335.

² 16 U.S.C. 470 et seq.

³ 16 U.S.C. 1531-1542. Also see the implementing regulations of U.S. Fish and Wildlife Service and National Marine Fisheries Service, 50 CFR 402.

⁴ 16 U.S.C. 1451 et seq., and see 15 CFR Part 930.

⁵ 33 U.S.C. 1344, and see 33 CFR 323.1.

⁶ Ex Parte No. 55 (Sub-No. 22A), *Implementation of Environmental Laws* (not printed), served March 29, 1990.

necting tracks.⁷ Another involves the construction of less than a mile of rail line to serve an industrial area.⁸ SEE completed its environmental analysis of one of the connecting track projects, which is located near Waltonville, Illinois, and found the project would have no significant environmental impact. SEE's analysis of the other two connecting tracks and the project involving the industrial park is still in process.

The larger constructions include three applications by power companies or their affiliates to construct lines near Westover, Alabama; Joppa, Illinois; and Council Bluffs, Iowa, in order to gain competitive access to other rail carriers.⁹ In its decision approving the Westover construction, the Commission adopted SEE's recommended conditions for mitigating impacts of this construction on water resources, wildlife and public safety.¹⁰ In the Joppa, Illinois construction, an environmental document was served on September 7, 1990, inviting public comment. This document recommended conditions to

protect water quality, waterways, and wildlife habitat. It also recommended conditions requiring consultation with local authorities to address concerns about soil erosion, control of noxious weeds, and access for adjacent property owners. After the public's comments on the Joppa environmental document are considered, SEE will make its final environmental recommendations to the Commission. With respect to the Council Bluffs project, SEE has conducted environmental consultations with the applicant and is now awaiting the applicant's submission of certain environmental information to assist in SEE's analysis of the environmental impacts of this proposal.

Another project filed with the Commission involves a proposal to construct a rail line to serve a new port facility to be constructed in Pascagoula, Mississippi.¹¹ SEE conducted a field inspection of the proposed Pascagoula line and is preparing an environmental document assessing the environmental effects of this project. In another application, Indiana and Ohio Railroad seeks authority to construct a line over an abandoned right-of-way to connect two separate line segments it currently operates to improve efficiency.¹² Due to the potentially significant safety problems posed by this application, an environmental impact statement is being prepared for this construction.

Also, SEE has conducted prefilming environmental consultations for a number of construction cases for which applications have not yet been filed. For example, SEE has been conducting its prefilming environmental review of the

⁷ Finance Docket No. 31599 (Sub-No. 2), *Burlington Northern Railroad Company—Connector Track Construction near Waltonville in Jefferson County, IL*, environmental assessment served April 27, 1990; Finance Docket No. 31650 (Sub-No. 1), *Burlington Northern Railroad Company—Connector Track Construction between Atmore and Mobile, AL*; and Finance Docket No. 31651 (Sub-No. 1), *Burlington Northern Railroad Company—Connector Track Construction between Atmore, AL and Cantonment, FL*.

⁸ Finance Docket No. 31680, *Mokena Illinois Railroad Company—Construction in Will County, IL*.

⁹ Finance Docket No. 31498, *Southern Electric Generating Company—Construction—Plant Gaston to CSXT Railroad near Westover, AL*, environmental assessment served October 24, 1989. Finance Docket No. 31656, *Joppa and Eastern Railroad Company—Construction—Joppa Plant to Burlington Northern Railroad near Joppa, IL*, environmental assessment served September 7, 1990. Finance Docket No. 31717, *Petition of Iowa Power Inc. for Exemption from 49 U.S.C. 10901*.

¹⁰ Finance Docket No. 31498, *Southern Electric Generating Company—Petition for Exemption—Construction of a Rail Line in Shelby County, AL* (not printed), served January 10, 1990.

¹¹ Finance Docket No. 31536, *Jackson County Port Authority D/B/A Greenwood Island Terminal Railroad, Construction of a Line of Railroad at Greenwood Island, Pascagoula, MS*.

¹² Finance Docket No. 31320, *Indiana and Ohio Railway Company Construction and Operation of a Line of Railway in Butler, Warren and Hamilton Counties, OH*.

proposed construction by Tongue River Railroad of a 40-mile rail line from Ashland to Decker, Montana.¹³ This review included scoping meetings which SEE conducted in Montana in December, 1989, to solicit public comment on the scope of the Environmental Impact Statement to be prepared for this project. The proposed line is to be an extension of an already authorized 82-mile line to be built in Montana to access low sulfur coal. Among the potentially significant environmental issues identified in the scoping process were concerns about the impacts of the construction on adjacent farming and ranching activities, water quality in the Tongue River, wildlife, and sites of cultural or religious significance to the Northern Cheyenne Indians that may be disturbed by construction activities.

SEE has also agreed to participate as a cooperating agency in the preparation of an environmental impact statement to be prepared jointly by the Department of the Interior's Office of Surface Mining, Reclamation and Enforcement and the Montana Department of State Lands. This document will address environmental concerns connected with the permitting of coal mining activities in the Bull Mountain area near Roundup, Montana, and will embrace an analysis of construction of an approximately 30-mile rail line to afford access to the proposed mine. SEE has also had informal consultations regarding the proposed construction of a rail line to provide high speed passenger service between California and Nevada.

Informal consultations with other parties exploring the possibility of constructing rail lines indicate that the trend toward increased construction activity

should continue through at least the next two fiscal years.

SEE has conducted field inspections for several of these anticipated constructions which may be filed in the coming fiscal year. Since rail construction is the type of Commission licensed activity that has the most potential for environmental impacts, considerable staff resources and effort have been devoted to analyses of these activities.

Finance Transactions

The Commission conducted environmental reviews for approximately 150 railroad finance transactions during the fiscal year. These included the application of a west coast rail carrier seeking to purchase 700 miles of trackage that would give it access to Chicago, Illinois.¹⁴ In that proceeding, conditions were recommended in the environmental assessment to protect water resources, wildlife and historic properties. In another proceeding, a Canadian carrier sought to acquire approximately 1,400 miles of line and trackage rights from a northeastern carrier.¹⁵ In that proceeding, SEE recommended conditions to protect eleven identified historic properties in Pennsylvania and unidentified properties in New York that could be found eligible for listing on the *National Register of Historic Places*. SEE also recommended conditions to protect historic properties in several other smaller finance transactions.

Rail Line Abandonments

SEE reviewed approximately 150 abandonments during the past fiscal

¹³Finance Docket No. 30186 (Sub No. 2), *Tongue River Railroad Company—Construction and Operation of Additional Rail Line from Ashland to Decker in Rosebud and Big Horn Counties, MT.*

¹⁴Finance Docket No. 31505, *Rio Grande Industries, Inc.—Purchase and Related Trackage Rights—Soo Line Railroad Company Line Between Kansas City, MO and Chicago, IL*, environmental assessment served May 30, 1990.

¹⁵Finance Docket No. 31700, *Canadian Pacific Ltd.—Purchase and Trackage Rights—Delaware and Hudson Railway Company*, environmental assessment served September 27, 1990.

year. In approximately 31 abandonments, the Commission imposed conditions related to the salvage of rail properties, as recommended by SEE. In a number of cases, the U.S. Army Corps of Engineers, U.S. Coast Guard, and State or local authorities were consulted to develop any measures necessary to mitigate impacts on water resources. In one case, consultation with the U.S. Coast Guard led to a condition requiring removal of a lift-span bridge crossing an intracoastal waterway to prevent a potential navigational hazard.¹⁶

SEE routinely consults the U.S. Fish and Wildlife Service regarding the potential impacts of Commission-approved actions on endangered or threatened species. Also, State officials often express concerns about state endangered, threatened or rare species. During the past fiscal year, conditions recommended by SEE and imposed by the Commission to protect wildlife normally included consultation with the federal or state agency prior to salvage or limitations on salvage activities. These limitations included restricting salvage to certain times of the year when species were not present or breeding in the area and limiting salvage to the right-of-way to prevent disturbing nearby wildlife habitat. Where Federally protected species are not involved, a condition requiring consultation with appropriate State authorities was usually imposed.

Historic Review Process

In over 50 abandonments, historic resource conditions were imposed to protect historic sites and structures.¹⁷ In so doing, the Commission required the

railroads to retain their interest in and refrain from altering sites or structures that might be historic until completion of the historic review process required by the National Historic Preservation Act.¹⁸ As a result of consultations conducted under the National Historic Preservation Act, SEE has worked toward identifying historic properties, determining whether the proposed abandonment would adversely affect these properties, and determining how to mitigate any adverse impacts. In cases where all parties agreed on appropriate mitigation, a memorandum of agreement was signed by the parties and transmitted to the Advisory Council on Historic Preservation for its approval. In one such instance, SEE worked quickly to secure such an agreement for a bridge to be abandoned over the Mississippi River that was damaged by fire. Quick action was necessary to allow the applicant to remove the damaged bridge before being subjected to fines for obstructing navigation.¹⁹ In another instance, the effect of abandonment on a historic structure located in West Virginia was mitigated by completion of a State historic inventory form.²⁰

In instances when the Advisory Council on Historic Preservation does not approve a memorandum of agreement or no agreement was reached, the Advisory Council is afforded an opportunity to comment on the effect of the abandonment on historic resources. The Commission must then consider the Advisory Council's comment in reaching its decision. For example, this was the case with abandonment of an ore dock and approach trestle in Michigan. SEE sought the Advisory Council's

¹⁶ Docket No. AB-6 (Sub-No. 317X), *Burlington Northern Railroad Company—Abandonment in Buffalo County, WI and Winona County, MN* (not printed), served July 13, 1990.

¹⁷ See, for example, Docket No. AB-6 (Sub-No. 317X), *Burlington Northern Railroad Company—Abandonment in Buffalo County, WI and Winona County, MN*, served July 13, 1990.

¹⁸ 16 U.S.C. 470 et seq.

¹⁹ Docket No. Ab-6 (Sub-No. 317X), *Burlington Northern Railroad Company—Abandonment—in Buffalo County, WI and Winona County, MN*.

²⁰ Docket No. AB-55 (Sub-No. 329X), *CSX Transportation, Inc.—Abandonment Exemption in Boone County, WV* (not printed), decided July 30, 1990.

comment because no agreement could be reached on how to mitigate the impacts of the abandonment on the historic ore dock itself. The State of Michigan concluded that the abandonment of the ore dock would be inconsistent with its management plan promulgated under the Coastal Zone Management Act. As a result, the Commission stayed this proceeding until the coastal zone problem could be resolved.²¹

During the past year, the historic review process required by the National Historic Preservation Act has been initiated for over 200 rail abandonments and acquisitions. This multi-step process is time consuming and not always compatible with the expedited time frames applicable to many Commission proceedings. The identification of historic properties is the biggest hurdle faced by the Commission in completing this review process. Accordingly, SEE has been actively consulting with the Advisory Council on Historic Preservation to develop workable approaches for conducting the historic review process. Also, the aforementioned proposed environmental rules recommend

informational requirements that are designed to facilitate the identification process. In addition, the Advisory Council on Historic Preservation in its comments to these proposed rules indicated its willingness to enter into a memorandum of agreement concluding that some Commission actions would have no effect on historic properties; this would effectively eliminate the need to conduct historic review for many actions that now require historic review. The Commission plans to continue to work with the Advisory Council to develop feasible approaches to historic review.

Trails Use

There were developments in the Commission's implementation of the National Trails Systems Act (Trails Act)²² regarding the conversion of abandoned rail corridors to trails use. The Commission's determination that it was not required to assess the environmental effects of subsequent trails use of abandoned right-of-way was upheld in court.²³ Also, SEE assisted in the preparation of a report to Congress on the Commission's efforts to implement the Trails Act.²⁴

²¹ Docket No. AB-303 (Sub-No. 5X), *Wisconsin Central Ltd.—Abandonment Exemption—in Marquette County, MI* (not printed), served September 19, 1990.

²² Public Law 90-573.

²³ *Iowa Southern R. Co.—Exemption—Abandonment*, 5 I.C.C.2d 496 (1989), upheld in No. 89-2142, *Todd Goos v. Interstate Commerce Commission*, (8th Cir. 1990).

²⁴ *Report of the Interstate Commerce Commission, Conversions of Rail Corridors to Trails*, issued April 1, 1990.

TARIFFS

The 1.3 million common carrier freight tariff filings of fiscal year 1990 reflect a modest increase from the 1.25 million tariff filings in fiscal year 1989. The steady receipt of tariffs at this level indicates continuation of the intense competition brought about by the deregulatory legislative actions begun in 1980.

Motor carrier tariff filings remained constant at 1.1 million while rail tariff filings increased significantly from 65,000 to more than 100,000. International ocean/land intermodal tariff filings decreased by 13 percent to nearly 74,000. Water carrier filings mildly decreased from 33,000 to nearly 32,000.

The 34,000 new rail contract filings of fiscal year 1990 is a slight increase over the 32,000 contract filings of 1989. The continued growth of contract pricing over the past several years indicates that rail contract pricing is an attractive alternative to tariff pricing for a significant segment of the shipping public.

Although rail carriers in fiscal year 1990 took only minimal advantage of their authority to file electronic tariffs, we anticipate increased electronic filings in fiscal year 1991. The motor carrier industry is not yet authorized to file electronic tariffs.¹

The total of passenger tariff filings by all modes increased to 3,100 from the previous year's filings of 2,900.

Informal Rate Cases

The Commission's Bureau of Traffic used its informal procedures to settle 5,377 cases concerning disputes over rate and tariff matters during fiscal year 1990. This simple and inexpensive process permitted the settlement of most tariff disputes without the need for the institution of time-consuming and costly formal procedures. Several hundred of the disputes involved freight bill claims

by auditors and collection agencies for alleged improperly underpaid freight bills of bankrupt motor carriers and freight forwarders. The Bureau was successful in showing that many of the claims were not properly supported and, consequently, improper claims against shippers and receivers of freight were withdrawn.

Every person or group, from large corporations to small consumers, has an opportunity to utilize the informal rate settlement process and to receive the same expert assistance that is provided by staff to the Commission in formal rate and tariff matters. A further public benefit of informal settlement is the dissemination of knowledge of pertinent law, workings of tariffs, and of each party's rights in order to prevent the future occurrence of similar disputes.

The Commission's special docket procedure permits rail and water carriers to seek authority to refund or waive the collection of admittedly unreasonable charges. Four hundred and ninety-five (495) special docket cases were processed authorizing reparations and waivers amounting to \$5,854,457.

Through the Commission's informal complaint proceedings, rail or water shippers may prevent expiration of the statute of limitations for overcharges or unreasonable charges by writing to the Commission and describing their complaints. If the carrier in question agrees that a particular movement involves overcharges or that the charges are unreasonable, refunds or waivers can be made without the need for formal procedures. The ICC processed nine such cases on the informal complaint docket during fiscal year 1990.

Suspension/Special Permission Board

The Suspension/Special Permission Board is an employee board established by the Commission to act initially for the Commission on matters involving

¹ The issue is pending on reconsideration in Ex Parte No. 444, *Electronic Filing of Tariffs*.

tariffs, rules, rates, charges and railroad contract discovery petitions.

Matters of suspension involve new or revised rates, charges, or rule provisions that are filed with the Commission in tariff form and concern the interstate transportation services provided by the nation's rail, motor, and domestic water carrier industries. Upon the request of interested or affected parties, proposed tariff changes are considered for possible investigation and/or suspension by the Suspension/Special Permission Board or by the entire Commission. Decisions of the Board are subject to reconsideration by the Commission.

During fiscal 1990, 74 protests were filed against 38 tariff proposals. Five proposals were suspended; 12 were permitted to become effective; 18 were permitted to become effective but were investigated; and three were canceled by the proposing carrier. There were five unprotested tariff proposals considered by the Board on its own initiative. Of these proposals, two were suspended, and three were permitted to become effective but were investigated.

In addition, the Board also reviewed 25 fuel-related adjustments to rates and charges, filed by the motor rate bureaus, in response to increased fuel costs resulting from the Persian Gulf crisis, and two general motor carrier rate bureau general increase proposals.

Two petitions for reconsideration of initial actions were filed requesting the

Commission to discontinue investigations of two tariff proposals. One of these petitions was granted;² the other was denied.³

The Board considered 18 general increases or restructurings of motor common carrier rates and charges filed by regional motor carrier bureaus,⁴ and two general increases in rates and charges applicable to household goods shipments which were filed by the Household Goods Carriers' Bureau.

Special permission matters involve applications requesting relief from the Commission's tariff and rail contract-filing regulations. During the fiscal year, the Board considered 140 such applications. Of those, 120 were granted; five were denied and 15 were withdrawn or returned before being decided. In addition, nine special permission authorities were revoked upon request by applicants because they were obsolete. As a result of motor carriers applying for shortened public notice for rate increases to recover rapidly escalating fuel costs and to publish such increases by abbreviated tariff format, the number of such applications considered by the Commission increased from that of fiscal year 1989.

The Board's decisions in this area benefited the public by reducing tariff publishing costs and paperwork and allowing carriers to react quickly to economic conditions and marketplace opportunities.

²Docket No. 40311, *Independent Action on Increases Within Middle Atlantic Territory* (not printed), served February 28, 1990.

³Docket No. 40395, *General Increase*, HGCB, February 4, 1990 (not printed), served May 14, 1990.

⁴Central States Motor Freight Bureau, Inc.; The Eastern Central Motor Carriers Association, Inc.; Middle Atlantic Conference; Midwest Motor Freight Bureau; The New England Motor Rate Bureau, Inc.; Niagara Frontier Tariff Bureau, Inc.; Pacific Inland Tariff Bureau, Inc.; Rocky Mountain Motor Tariff Bureau, Inc.; and Southern Motor Carriers Rate Conference, Inc.

FINANCIAL OVERSIGHT

The Commission's financial oversight activities include accounting and reporting, financial analysis, cost analysis, cost development, and auditing. These functions involve the preparation, amendment, and interpretation of prescribed accounting and financial reporting rules; the examination and analysis of accounts and financial statements; the analysis of cost and financial evidence submitted by parties to proceedings before the Commission; and the compilation and publication of transportation statistics and cost studies.

Accounting and Reporting

The Commission terminated the rulemaking proceeding which had proposed that each Class I railroad be required to have an independent public accountant both review its depreciation study and submit a report addressing whether the railroad's study was undertaken in conformance with Commission regulations and instructions.¹ The Commission discontinued this proceeding because the record indicated that adoption of the proposal would increase the burden on the railroads while not producing any significant benefits for the Commission and the public. Also, the Commission, through changes in internal operating procedures, has eliminated the backlog of unreviewed studies that existed when the rulemaking proceeding was instituted.

The Commission authorized its Office of Economics to conduct an annual survey of non-reporting motor carriers of property and passengers. The purpose of the survey is to identify the non-reporting motor carriers that have increased their annual operating revenues above the levels that would require

them to file annual and quarterly financial reports with the Commission.

Cost and Financial Analysis

The Commission analyzed financial and cost evidence submitted by railroads and other parties in a diversity of proceedings involving such matters as the railroads' cost of capital and revenue adequacy, the reasonableness of rates for transportation of coal and various recyclable commodities, trackage rights compensation, purchases of rail lines, and branch line abandonments.

The Commission determined that two Class I railroads, Florida East Coast Railway Company and Norfolk Southern Corporation, were revenue adequate for 1988. This was the first annual revenue adequacy decision to be based upon the data in the new supplementary schedule to the Annual Report Forms R-1 filed by Class I railroads.² This schedule includes consolidated data for all railroads within a system, together with railroad-related operations of affiliated companies, and excludes income taxes associated with non-rail income and expenses. The Commission also made some significant changes to certain procedures for determining revenue adequacy. These changes from past practice included using acquisition cost in lieu of predecessor cost for those railroads whose assets were written-down due to reorganizations or mergers, and allowing rail-related special charges in net railway operating income.³

The Commission additionally determined that the railroad industry's composite cost of capital rate was 11.5 percent for the year 1989.⁴

² Schedule 250, Consolidated Information for Revenue Adequacy Determination.

³ Railroad Revenue Adequacy—1988 Determination, 6 I.C.C. 2d 163 (1989) and 6 I.C.C.2d 933 (1990).

⁴ Railroad Cost of Capital—1989, 6 I.C.C.2d 836 (1990).

¹ Ex Parte No. 468, *Review of Railroad Depreciation Studies By Independent Public Accountants* (not printed), served April 29, 1988 and October 4, 1990.

In coal proceedings, maximum rate reasonableness is determined by application of the Commission's constrained market pricing principles contained in its Coal Rate Guidelines.⁵ In a case that was completed in June 1990, the Commission found that the defendant railroads did not possess market dominance over one of several complaining shippers and that rates charged to those market dominant shippers by one railroad were reasonable, but that the rates charged by the other railroad were unreasonable.⁶ Appeals were considered in several proceedings in which complaints were filed by shippers seeking damages and interest for the transportation of their recyclable traffic. Damages and interest of \$340,000 was awarded in one proceeding,⁷ and in two other proceedings the Commission awarded damages of approximately \$34,644 plus interest.⁸

The Commission analyzed cost and financial evidence submitted in connection with railroad applications to abandon selected line segments. These analyses took into account the avoidable loss or gain which would result from each abandonment through the determination of applicable revenues and avoidable costs. Cost and financial evidence were analyzed in other proceedings involving trackage rights compensation and shipper purchases and acquisition of rail branch lines.

The Commission analyzed the financial data included in applications filed by motor carriers of property and passengers requesting approval to be self-insured for bodily injury and property damage claims and/or cargo claims. In performing these analyses, the Commission determined whether each applicant had the financial resources to fund its proposed self-insurance program and whether approval of a self-insurance plan, if warranted, should include conditions or restrictions to ensure the availability of sufficient resources to pay claims for statutory minimum coverage levels.

The Commission evaluated the financial condition of large transportation companies in order to determine whether they were financially able to provide service. This included an intensive and continuous monitoring of Greyhound Lines, Inc., the nation's only transcontinental motor carrier of passengers, which has been operating under Chapter XI bankruptcy since June 4, 1990. Reports continued to be publicly released each quarter, which showed the latest revenues, earnings, and traffic volume data of Class I railroads, 100 of the nation's largest trucking companies, 15 of the largest household goods carriers, and 10 of the largest bus companies.

Cost Development

The Commission established the scope and procedural schedule for the first review of the Uniform Railroad Costing System (URCS).⁹ This is a long-term research project aimed at further improvements and refinements to URCS. Comments were requested on the econometric and statistical issues which underlie the URCS variability factors. Under the procedural schedule, the Commission will issue a preliminary decision on October 20, 1992.

⁵Coal Rate Guidelines, Nationwide, 1 I.C.C.2d 520 (1985) ("Guidelines"), *aff'd sub nom. Consolidated Rail Corp. v. United States*, 812 F.2d 1444 (3d Cir. 1987).

⁶Coal Trading Corporation, et al. v. The Baltimore and Ohio Railroad Company, et al., 6 I.C.C.2d 361 (1990).

⁷Docket No. 39886, *Huron Valley Steel Company v. Seaboard System Railroad, Inc. et al.* (not printed), served September 25, 1990.

⁸Docket No. 39639, *Vulcan Materials Company v. Alton and Southern Railroad Company* (not printed), served March 19, 1990, and Docket No. 39812, *Vulcan Materials Company v. Alton and Southern Railroad Company* (not printed), served March 19, 1990.

⁹Ex Parte No. 431 (Sub-No. 2), *Review of the General Purpose Costing System* (not printed), served September 25, 1990.

The Commission issued four quarterly Rail Cost Adjustment Factor (RCAF) decisions, during the fiscal year, as part of its general increase procedures.¹⁰ The methodology for calculating the fuel and the material and supplies elements of the index underlying the RCAF were both revised.¹¹ Additionally, a decision was issued defining which index data are non-proprietary and which are not.¹² A seven-year (1982-1988) productivity adjustment replaced the six-year one used for the fourth quarter of 1989 and the first and second quarters of 1990.¹³ It was first applied to the third quarter 1990 RCAF.

Auditing

Each Class I railroad is required to

submit a report from an independent accountant stating that specified data in the Railroad's Annual Report Form R-1 have been examined using agreed-upon procedures, and have been found to be in compliance with the Uniform System of Accounts for Railroad Companies. The accountant's report must present any material exceptions which may have come to the accountant's attention during the examination. The Commission reviewed the working papers of independent accountants for each Class I railroad to determine compliance.

Commission auditors also investigated transactions between and among railroads and their affiliated companies to determine the impact of such transactions on the railroads' financial condition.

¹⁰Ex Parte No. 290 (Sub-No. 5), *Quarterly Rail Cost Adjustment Factor* (not printed), served December 22, 1989, March 20, 1990, June 21, 1990, and September 20, 1990.

¹¹*Railroad Cost Recovery Procedures*, 6 I.C.C.2d 634, 956 (1990).

¹²*Railroad Cost Recovery Procedures*, 6 I.C.C.2d 530 (1990).

¹³Ex Parte No. 290 (Sub-No. 4), *Railroad Cost Recovery Procedures-Productivity Adjustment* (not printed), served June 21, 1990.

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ENFORCEMENT

The Commission continued to direct its enforcement efforts to coincide with the trend toward reliance on marketplace solutions, rather than regulatory interventions. The Commission's enforcement activities thus were concentrated in those areas in which competition appeared to have been lessened, or where assistance was necessary to aid parties lacking the resources and leverage needed to independently achieve compliance with the Interstate Commerce Act and the Commission's regulations. The Commission placed particular enforcement emphasis on issues involving motor carrier safety and financial responsibility. The following discussion of the Commission's enforcement program groups pertinent cases under four violation categories: (1) the Commission's household goods regulations; (2) small business protection; (3) fraudulent activity; and (4) unsafe and uninsured operations. The Commission sought and obtained a large number of consent agreements and court-approved injunctions, in fiscal year 1990, to insure future compliance with provisions of both the Interstate Commerce Act and the ICC's regulations, and a total of \$338,250 was collected in penalties.

Household Goods Regulations

The Commission has taken formal enforcement action to protect individual shippers and to ensure that household goods transportation companies abide by applicable regulations.

In a case involving violations of the Commission's household goods transportation regulations, an injunction was obtained against Delta Transportation Group, Inc., d/b/a Trans Country Moving and Storage, Bohemia, New York, enjoining the company from failing to cause shipments of household goods to be transported with reasonable dispatch, failing to notify shippers of delays in pickups or deliveries of household goods shipments and amended pickup or delivery dates, and failing to

prepare Orders for Service containing the minimum information required by the Commission's regulations.¹

In a similar case, Red Ball Van Lines of Hollis, New York, was enjoined against failing to comply with the Commission's regulations regarding the processing and disposition of loss and damage claims.² The injunction also required Red Ball to reimburse the Commission for a portion of the costs incurred in prosecuting the action.

An injunction was obtained against Eagle Van Lines, Inc., of Cleveland, Ohio, enjoining it from violating numerous regulations governing the transportation of household goods and the processing of claims for loss and damage.³ Eagle was ordered to: (1) prepare Orders for Service and Bills of Lading containing the minimum prescribed information; (2) transport shipments with reasonable dispatch; (3) notify shippers of anticipated delays in pickup or delivery; (4) for shipments moving on a binding estimate, furnish such estimates in writing and demand a payment of an amount not exceeding the amount of the estimate; (5) for shipments moving pursuant to non-binding estimates, furnish such estimates in writing and relinquish possession of the shipment upon payment of not more than 110 percent of the estimated charges; (6) prepare weight certificates in the form and manner prescribed; (7) acknowledge in writing receipt of loss and damage claims within 30 days of receipt; and (8) pay, decline, or make a firm settlement offer in writing to the claimant within 120

¹ *Interstate Commerce Commission v. Delta Transportation Group, Inc., d/b/a Trans Country Moving & Storage*, No. CV-89-2425 (E.D. NY., December 7, 1989).

² *Interstate Commerce Commission v. Red Ball Van Lines*, No. 89-CV-853 (E.D. NY., January 30, 1990).

³ *Interstate Commerce Commission v. Eagle Van Lines, Inc.*, No. 88-0861 (N.D. OH., April 3, 1990).

days after the receipt of the claim or else advise claimant in writing at the end of 120 days and after each succeeding 60-day period of the status of the claim and the reason for the delay in making final disposition.

The Commission obtained an injunction against Dorothy Vogel Moving Systems, Inc., of Albany, New York, enjoining the carrier from transporting household goods in interstate commerce without the necessary insurance and operating authority, failing to effect timely delivery of all household goods picked up, and failing to reimburse shippers whose household goods were picked up but not delivered.⁴

In yet another case, Flushing Van & Storage Co., Inc., and Ebb Van Lines, Inc., both of Plainview, New York, entered into a Consent Judgment and Decree wherein they agreed to pay the Department of Justice a fine of \$5,000.00 and enter into a permanent injunction enjoining them against failing to comply with the regulations governing the disposition of loss and damage claims and the regulations governing the transportation of household goods in interstate or foreign commerce.⁵

The Commission obtained an injunction against Mohawk Van Lines, Inc., of Bellrose, New York, enjoining the company from failing to comply with the Commission's loss and damage claims regulations, the regulations for the transportation of household goods, and the lease and interchange of vehicles regulations.⁶

In another case Bekins Van Lines, Co. paid a \$20,000 civil penalty for its

failure to follow the duplicate payment and overcharge processing regulations on corporate accounts and commercial shipments.⁷ In addition to the penalty, Bekins undertook a revision of its accounting and cash processing systems to assure its future compliance.

Small Business Protection

Included within this program are cases involving violations of leasing regulations designed to prevent owner-operator abuses; violations of duplicate payment, overcharge, and loss and damage regulations; and, violations of statutes prohibiting lumping, failure to charge applicable tariff rates and misdescription of shipments.

The Commission obtained an injunction permanently enjoining Consumers Markets, Inc., a receiver of produce and dry goods, from requiring owner-operators to pay "lumpers" to unload.⁸ The lawsuit arose from an incident where an owner-operator was beaten after refusing to pay three lumpers to unload his trailer.

CRST, a Class I common and contract carrier of general commodities, was permanently enjoined from failing to refund duplicate payments within 30 days of discovery.⁹ The company refunded in excess of \$100,000 in illegally retained duplicate payments to its customers, pursuant to the court order.

In a similar case, CSX Transportation, Inc., of Jacksonville, Florida, completed refunding overpayments and duplicate payments to its customers.¹⁰

⁷Case concluded under Federal Claims Collection Act (31 U.S.C. 3711). Agreement of Settlement, dated February 9, 1990.

⁸*Interstate Commerce Commission v. Consumer Markets, Inc.*, No. 89-3185-CF-S-4 (W.D. MO., March 20, 1990).

⁹*Interstate Commerce Commission v. CRST, Inc.*, No. C-87-0139, Cedar Rapids, Iowa (N.D. IA., May 4, 1990).

¹⁰Agreement of Settlement, dated August 11, 1989, final payment, May 9, 1990.

⁴*Interstate Commerce Commission v. Dorothy Vogel Moving Systems, Inc.*, No. 89-CV-108 (N.D. NY., May 4, 1990).

⁵*United States v. Flushing Van & Storage Co., Inc., and Ebb Van Lines, Inc.*, No. 88-CV-1697 (E.D. NY., May 25, 1990).

⁶*Interstate Commerce Commission v. Mohawk Van Lines, Inc.*, No. 89-CV-4011 (E.D. NY., March 2, 1990).

A total of 260 items were refunded between January 30 and May 30, 1990, totalling \$283,192.45. A grand total of \$1,175,241.08 was refunded pursuant to the terms of the Agreement of Settlement.

In another similar case, Willey's Express, Inc., of Concord, New Hampshire, was enjoined against failing to comply with the Commission's regulations covering the disposition of loss and damage claims and overcharge claims.¹¹ The injunction also required Willey's to review and settle all outstanding and unsettled loss and damage claims and overcharge claims.

The Commission obtained an injunction enjoining Fleet Rail, Inc., a broker, from charging shippers a different compensation than the rate specified in the motor carrier's tariff.¹² Fleet Rail was ordered to make restitution to the shippers it had overcharged for transportation since December 1, 1986.

In another case involving a property broker, R.E.J. Transport was enjoined from failing to remit freight charges to the transporting carrier; using unauthorized carriers; failing to charge the carrier's tariff rate; using contract carriers without a written bilateral contract in effect; and operating without a bond in effect and on file with the Commission and without a license.¹³ REJ was ordered to make restitution of illegally retained freight charges to transporting carriers. Similar actions were prosecuted against three other brokers.

The Commission obtained a civil penalty of \$251,700 from Lyphomed, Inc. for misdescribing freight to a motor carrier which resulted in the underpayment of

freight charges.¹⁴ The Commission had alleged that Lyphomed, Inc. described medical solutions as distilled water which was subject to a lower tariff rate.

In a case involving owner-operator abuses, Bestway Transport Company, of Willard, Ohio, signed an Agreement of Settlement in which it agreed to discontinue the practice of deducting fees from owner-operator settlements for which there are no provisions in their leases with the owner-operators.¹⁵ The company reimbursed approximately \$7,000 improperly deducted from 17 owner-operators under the terms of the Agreement.

In another case, an injunction was obtained ordering Viacom Holding, 1985, LTD., a Canadian carrier, to comply with the owner-operator leasing regulations in its U.S. operations.¹⁶ The carrier had failed to comply with a number of the Commission's truth-in-leasing regulations.

Fraudulent Activity

Included within this category of fraudulent practices are cases involving fraud, bribery, and violations of ethical standards governing the conduct of attorneys and practitioners who represent clients before the Commission.

In a case involving insurance fraud, Jack Ivey Etheridge, was sentenced on April 6, 1990, to five years in prison and ordered to make restitution in the amount of \$237,393.83 to victims of his fraudulent scheme.¹⁷ Etheridge had pled guilty to mail fraud in connection with the sale of bogus insurance policies to passenger carriers.

On November 17, 1989, Bobby R. Johnson was sentenced to one year in prison and Shirley Davis was sentenced

¹¹ *Interstate Commerce Commission v. Willey's Express*, No. 88-78 (D. NH., January 10, 1990).

¹² *Interstate Commerce Commission v. Fleet Rail, Inc.*, No. 88-C-8480, (N.D. IL., November 1, 1989).

¹³ *Interstate Commerce Commission v. R.E.J. Transport*, No. 90-C-212, (N.D. OK., July 18, 1990).

¹⁴ *Agreement of Settlement* (September 14, 1990).

¹⁵ *Agreement of Settlement* (March 16, 1990).

¹⁶ *Interstate Commerce Commission v. Viacom Holdings, 1985, Ltd.* No. C89-1441 (W.D. WA., October 1, 1990).

¹⁷ *United States v. Jack Etheridge*, CR. No. 89-40-A (M.D. LA., April 6, 1990).

to six months in prison.¹⁸ The Commission reported in last year's Annual Report that Johnson had pled guilty on September 1, 1989, to one count of making false statements to the ICC in violation of 18 U.S.C. 1001 and Davis pled guilty to accepting a gratuity in violation of 18 U.S.C. 201. Johnson, the President of B. J. Express, Inc., and Ray's Express, Inc., both of Cincinnati, Ohio, also divested himself of all interests in the trucking industry as part of the plea bargain. Johnson was indicted in February 1989 for making numerous false statements to the ICC and the Military Traffic Management Command (MTMC) in connection with obtaining authority to haul Department of Defense (DOD) freight after he had been disqualified from doing so by the MTMC. He was also charged with bribing Davis, a former MTMC employee, for the purpose of illicitly obtaining DOD traffic. Davis was indicted for accepting bribes from Johnson.

The Commission reported in last year's Annual Report that Ralph J. Zola, North American Transport Co., Inc. and Auto Caravan, Corp. had willfully violated an earlier Commission order revoking the operating authority of a carrier of motor vehicles previously owned by Mr. Zola.¹⁹ The Commission found that Mr. Zola had evaded the revocation order by acquiring the stock of a defunct carrier, and using its operating authority to continue operations the Commission revoked. The Commission revoked the replacement authority and directed Mr. Zola to cease and desist from engaging in any transportation activity within the Commission's jurisdiction.

The United States Court of Appeals for the Third Circuit affirmed the decision of the Commission revoking the operating authority of the successor carrier but concluded that the Commission's prohibiting Mr. Zola from direct or indirect involvement in any ICC-regulated activity was too broad a remedy.²⁰ The Commission's decision on remand directing Mr. Zola to cease and desist from directly or indirectly engaging in the for hire transportation of motor vehicles within the Commission's jurisdiction was affirmed by the Third Circuit.²¹

In a case involving qualifications to represent others before the Commission, a practitioner was disbarred from practice for failure to provide appropriate representation for his clients.²² The practitioner admitted the charges against him and tendered his resignation.

In another case, the Commission suspended a practitioner from practice for one year.²³ The Commission affirmed the Administrative Law Judge's finding that the practitioner had engaged in trafficking in authorities by his establishment and sale of small carriers for which he obtained authorities from the Commission by means of false and fraudulent representations.

Unsafe or Uninsured Operations

All motor carriers seeking operating authority from the Commission must establish that they are fit to conduct the operations they propose and are willing to conform to statutory and administrative requirements, including Federal Motor Carrier Safety Regulations. Safety fitness is a primary concern of the Commission.

¹⁸ *United States v. Bobby R. Johnson*, No. CR-1-89-018-01 (S.D. OH., November 17, 1990); and *United States v. Shirley J. Davis*, No. CR-1-89-018-03 (S.D. OH., November 17, 1989).

¹⁹ No. MC-C-30003, *Ralph J. Zola, North American Transport Co., Inc., and Auto Caravan Corp.—Show Cause Proceeding*, 5 I.C.C. 2d 655 (1989).

²⁰ *Zola v. Interstate Commerce Commission*, 889 F.2d 508(3d Cir. 1989).

²¹ *Ralph J. Zola v. Interstate Commerce Commission and the United States of America*, No. 90—3018, Third Circuit, August 14, 1990.

²² Ex Parte No. 488, in *The Matter of Jim G. Pritzer* (not printed), served June 15, 1990.

²³ Ex Parte No. 481, in *The Matter of Doyle G. Owens* (not printed), served July 25, 1990.

All applications filed by carriers holding "unsatisfactory" safety ratings and all applications for motor passenger or hazardous materials authority filed by carriers holding "conditional" ratings are rejected by the Commission. All other applications filed by carriers holding "conditional" safety ratings are examined on a case-by-case basis. Such applicants must submit evidence addressing the measures they have taken to achieve full compliance with U.S. Department of Transportation (DOT) safety requirements and to correct any deficiencies cited in the audit upon which their performance rating was based. Proof that an applicant has requested a reaudit by the DOT must also be submitted. Generally, where an applicant in this category has requested a reaudit by DOT, has affirmatively established that it has eliminated any safety deficiencies cited, and has brought its operations into full compliance with DOT regulations, the Commission will tentatively grant authority, subject to a one-year term limitation. The Commission also grants one-year term authority to new carriers that do not possess DOT safety ratings. This authority expires after one year unless an applicant petitions to remove the term limitation based upon its receipt of a "satisfactory" safety rating. The Commission no longer automatically grants authority to transport hazardous commodities unless specifically requested by the applicant. This change in policy permits the Commission to identify applicants seeking this authority and to increase pre-licensing safety checks. It also makes it easier for trucking companies to meet their state insurance requirements.

The Commission's insurance compliance program emphasizes the use of consent agreements to cure insurance deficiencies. The Commission's regulations specify minimum insurance levels for various types of carriers and, when coverage expires or is cancelled, the

Commission's field staff conducts an investigation. Where violations are found, the Commission then seeks voluntary compliance through consent agreements by which involved carriers agree not to operate until they have obtained appropriate insurance coverage. During fiscal year 1990, the Commission obtained 1,435 consent agreements in insurance cases. As appropriate, the Commission takes stronger enforcement action for lack of insurance where carriers fail or refuse to obtain prescribed insurance. For example, the Commission obtained an injunction against Consolidated Transportation, Inc. and Bernard R. Seidling, enjoining them from transporting hazardous material without adequate insurance.²⁴ Overall, there were 80 injunctions obtained against carriers during the fiscal year for lack of adequate insurance.

The Commission conducts follow-up investigations to ensure that carriers comply with consent agreements and injunctions and that they are conducting interstate operations with appropriate levels of insurance. Carriers that continue to operate without appropriate insurance are subject to appropriate remedial action, including contempt actions.

In a case involving disobedience of an injunction, C.M.V. Associates, Ltd. d/b/a Trans Express, Allentown, Pennsylvania, and its President, Kent Craven, were found in contempt of court for violating a permanent injunction order which prohibited Trans Express from transporting passengers in interstate commerce without the necessary operating authority and insurance coverage.²⁵ The Court ordered the six minibuses operated by Trans Express and

²⁴ *Interstate Commerce Commission v. Consolidated Transportation, Inc., and Bernard R. Seidling*, No. 80-C-522-S (W.D. Wt., November 2, 1989).

²⁵ *Interstate Commerce Commission v. C.M.V. Associates, Ltd., d/b/a Trans Express, and Kent Craven*, No. 90-227 (E.D. PA., March 19, 1990).

Craven to be impounded by the U.S. Marshal and also ordered the defendants to post a \$25,000 bond with the Court which would be forfeited upon evidence of continuing violations of the injunction. The defendants were also ordered to pay attorney's fees and other costs incurred by the ICC in prosecuting the action.

The Commission exercises its powers to issue cease-and-desist orders, as well as suspensions and revocations of authority where motor carriers have demonstrated a continuing failure to comply with the Federal Motor Carrier Safety Regulations (FMCSR). The Commission thus revoked the authority held by M. Bulifant Trucking, Inc., Cherry Hill, New Jersey, based on that carrier's willful violation of a 1986 cease and desist order which suspended its certificates for 30 days based on persistent and in-

tentional noncompliance with numerous Federal Motor Carrier Safety Regulations.²⁶ The Commission found that Bulifant's willful noncompliance with the FMCSR continued unabated following the cease and desist order and that the carrier further defied the Commission's order by operating, by the device of a sham leasing arrangement, during the 30-day suspension period. In light of evidence that the principals of Bulifant had discontinued motor carrier operations under that name and resumed operations under the name Walton Leasing Co., the Commission also revoked Walton Leasing's operating authority and issued a cease and desist order against Joseph D. Bulifant and Walton J. Bulifant prohibiting them from engaging in transportation activities within the Commission's jurisdiction until further order of the Commission.

²⁶No. MC-C-30160, *M. Bulifant Trucking, Inc., Investigation and Revocation of Certificates* (not printed), served December 22, 1989.

COURT ACTIONS

The Commission's litigation continued to focus on significant issues arising under the Staggers Rail Act of 1980 and the Motor Carrier Act of 1980. A high percentage of the court cases of the Office of the General Counsel again involved the rights and remedies of rail labor. The vast majority of court decisions issued during the past fiscal year have upheld the Commission's decisions. In those instances where the courts reversed or remanded decisions to the Commission, the Commission has either sought a rehearing by the courts, or it has reopened its proceedings to reconsider its views.

There were 337 pending cases at the beginning of the fiscal year, with an additional 57 cases being filed during the year. As of September 30, 1990, the courts had decided 74 cases, leaving 320 cases pending at the end of the year. Of those 74 concluded cases, the Supreme Court decided 2, there were 9 federal district court decisions, and the 63 remaining decisions were issued by the various federal courts of appeals.

Railroad Issues

Rail Labor. In the area of rail labor, the Supreme Court on March 26, 1990, granted petitions filed by the railroads¹ to review a decision in which the United States Court of Appeals for the District of Columbia Circuit ruled that the Commission did not have the power under Section 11341(a) to override provisions of collective bargaining agreements.² Involved in the dispute before the Supreme Court are two Commission decisions, reversed by the D.C. Circuit, that affirmed awards of arbitration committees acting pursuant to labor protective

conditions previously imposed by the Commission.³ The committees had set the terms for implementing the post-merger consolidation of repair shops in one case, and locomotive dispatching in the other, and in doing so, modified certain terms of existing collective bargaining agreements to permit implementation. These matters remained pending before the Supreme Court at the close of fiscal year 1990.

Following the D.C. Circuit's remand, however, the Commission reopened the proceedings and sought comments by the parties and the public on two issues that the D.C. Circuit declined to address. After considering these comments, the Commission held that, pursuant to section 11347, its authority to modify collective bargaining agreements is generally limited to the selection of work forces and the assignment of employees, with some qualifications, and only to the extent necessary to permit the carrying out of a merger or consolidation.⁴ Employees' contract rights are otherwise to be preserved and their traditional right to bargain over their pay, rules and working conditions is not to be undermined.

The Commission also ruled that 49 U.S.C. 11341(a) foreclosed resort to Rail Labor Act (RLA) remedies for modification or enforcement of collective bargaining agreements (CBAs), at least to the extent of the authority to modify CBAs without resort to RLA under 49 U.S.C. 11347, but only as needed to permit implementation of a merger or consolidation approved by the Commission. The Commission vacated the two arbitration awards and remanded

¹No. 89-1027, *Norfolk and Western Railway Company v. American Train Dispatchers Association*; and No. 89-1028, *CSX Transportation, Inc. v. Brotherhood of Railway Carmen*.

²*Brotherhood of Railway Carmen v. ICC*, 880 F.2d 562 (D.C. Cir. 1989).

³*CSX Corporation — Control — Chessie System, Inc. and Seaboard Coast Line Industries, Inc.*, 41 C.C.2d 641 (1988) and *Norfolk Southern Corporation — Control — Norfolk and Western Railway Company and Southern Railway Company*, 41 C.C.2d 1080 (1988).

⁴*CSX Corp. — Control — Chessie and Seaboard C.L.I.*, 61 C.C.2d 715 (1990).

them for further negotiations by the involved parties and, if necessary, for consideration by arbitrators.

In a case of first impression, the D.C. Circuit affirmed⁵ a Commission decision resolving a rail labor issue that emanated from the Commission's earlier approval of the sale of a rail line and the transfer of trackage rights from one railroad to another railroad.⁶ The Commission had upheld an arbitrator's rejection of a union claim that its members were entitled to carry the terms of their existing collective bargaining agreement with the seller to the buyer if these members accepted employment with the buyer. In addition to upholding the Commission's view that labor contracts are not portable in line sales, the court also affirmed the Commission's refusal to interfere in the arbitral process until arbitration has been completed.

The courts also disposed of three cases involving the standing of rail labor unions or their right to sue. In opinions deciding two related rail labor cases, the Seventh Circuit issued an important ruling related to the standing doctrine.⁷ It held that under the Interstate Commerce Act, a rail employee does not have a protected interest in retaining the status quo such as to give him standing to challenge the merits of an exempted acquisition of a rail line where no parties having standing, such as shippers, have done so. Labor has standing in its own

right to challenge the Commission's decision not to impose labor protective conditions, or in the case of an authorized abandonment upon which labor protective conditions have been imposed to challenge the adequacy of those conditions. Lacking standing in his own right, a rail employee cannot rest a challenge to the merits of the transaction on the interests of third parties such as shippers, or on the public interest. In addition, the court determined that off-line shippers lacked standing to challenge the Commission's environmental assessment. The court denied requests for rehearing and for rehearing *en banc* in both cases. Time for the filing of a petition for a writ of certiorari had not expired at the close of the fiscal year.

Also, the D.C. Circuit dismissed, for lack of standing, the attempt of the United Transportation Union to challenge a rulemaking decision of the Commission exempting officers or directors of rail carriers from the requirement that they obtain prior Commission approval to hold the position of officer or director of another rail carrier.⁸ The court held that petitioners had not shown how they would be harmed.

National Trail Systems Act. During the past fiscal year, the courts rendered two decisions that addressed major issues related to the National Trails System Act.⁹ In the first case, the Supreme Court unanimously upheld the constitutionality of this interim trails use statute.¹⁰ The Court ruled that the Trails Act does not result in an uncompensated taking because the Tucker Act¹¹

⁵ *United Transportation Union v. ICC*, 905 F.2d 463 (D.C. Cir. 1990).

⁶ *Southern Ry. Co. & Norfolk So. Corp. — Pur.*—II, C.R.R., 51 C.C.2d 842 (1989).

⁷ See *Simmons v. ICC*, 900 F.2d 1018, rehearing denied, 909 F.2d 186 (7th Cir. 1990), affirming F.D. 31110, *Chicago-Chemung Railroad Corp.—Exemption, Acquisition and Operation—Rail Line of Chicago and North Western Transp. Co. Between Harvard and Chemung in McHenry Cty., IL* (not printed), served March 18, 1988, and *Simmons v. ICC*, 900 F.2d 1023 (7th Cir. 1990), affirming AB-1 (Sub-No. 221X), *Chicago and North Western Transp. Co.—Abandonment Exemption—Boone Cty., IL* (not printed), served May 8, 1989.

⁸ *United Transportation Union v. ICC*, 891 F.2d 908 (D.C. Cir. 1989), cert. den. 110 S.Ct. 3271 (1990), affirming *Exemption From 49 U.S.C. 11322(a) for Certain Interlocking Directorates*, 5 I.C.C.2d 7 (1988).

⁹ Public Law 90-573.

¹⁰ *Preseault v. ICC*, 110 S.Ct. 914 (1990).

¹¹ 28 U.S.C. 1491.

is available to redress the claims of reversionary landowners whose property is taken as the result of interim trails use. It then held that the statute is a valid exercise of the Commerce Clause power. The Court observed that this law was designed to advance two valid congressional objectives: (1) the creation of new recreational trails and (2) rail banking.¹² The Court ruled that either purpose alone would be sufficient to sustain the legality of the exercise of congressional power under the Commerce Clause. Nevertheless, the Court went on to specifically reject the petitioners' argument that the rail banking purpose is a sham.

In the second trails use case, the Eighth Circuit affirmed the Commission's decision that it is not required to analyze the environmental effects of interim trails use under the Trails System Act.¹³ The court upheld the Commission's determination that it meets its responsibilities under the National Environmental Protection Act by taking a hard look at the environmental consequences of proposed abandonments. It found that the agency is not required to analyze the environmental effects of trail use because the ICC's role, under Section 1247(d), is essentially a ministerial one and that the Commission can exercise little discretion in issuing a notice (or certificate) of interim trail use.

Feeder Line Sales. The D.C. Circuit upheld the Commission's decision to simultaneously assess competing applications under the feeder line purchase statute at 49 U.S.C. 10910 notwithstanding the fact that the statute does

not expressly authorize the Commission to do so.¹⁴ It also agreed with the Commission's denial of a purchaser's request to receive a second interchange or to construct new track alongside the existing line on the ground that the feeder provision is aimed at the transfer of existing lines, not the creation of new ones. Furthermore, the court agreed that Congress did not intend for this forced sale provision to be used to establish a competitor for overhead traffic.

Rates. The courts affirmed two Commission decisions in which the Commission held that it was without jurisdiction to hear certain railroad rate complaints because the complainants failed to prove that the respective respondent railroads had market dominance. In one decision,¹⁵ the Third Circuit upheld a Commission decision dismissing a rate complaint filed by an exporter of Western coal. Because the shipper was merely a broker matching up coal producers and consumers, the Commission found that many alternatives were available and, therefore, the railroads could not exercise any degree of market dominance. The Commission also found that stand-alone cost evidence is directed to the reasonableness of the rate level and is inappropriate in assessing market dominance. The Commission explained that 49 U.S.C. 10709 requires it to determine market dominance before it considers rate reasonableness.

In the second decision the Third Circuit affirmed the Commission's dismissal of another complaint for a lack of

¹² Rail banking, as used here, means the preservation of abandoned rail corridors for use in the possible future reactivation of rail service.

¹³ *Todd Goos v. ICC*, U.S.C.A. 8th Cir. No. 89-2142 (decided August 2, 1990), *aff'g Iowa Southern R.R.—Exemption—Abandonment in Pottawattamie, Mills, Fremont and Page Counties, IA*, 5 I.C.C.2d 496 (1989).

¹⁴ *Cheney Railroad Company, Inc. v. ICC*, 902 F.2d 66 (D.C. Cir. 1990), petition for rehearing denied June 28, 1990, *aff'g Cheney Railroad Co.—Feeder Line Acquisition—CSX Transportation, Inc. Line Between Greens and Ivalee, AL*, 5 I.C.C.2d 250 (1989).

¹⁵ *Westmoreland Coal Sales Co. v. ICC and United States*, No. 89-3652 (U.S.C.A. 3d Cir. Apr. 9, 1990) (per curiam), *aff'g Westmoreland Coal Sales Co. v. Denver and R.G.W.R. Co.*, 5 I.C.C.2d 751 (1989).

market dominance.¹⁶ The Commission, relying on 49 U.S.C. 10728, found that it could consider the reasonableness of certain special charges assessed against shippers for services incidental to a line-haul without also considering the reasonableness of the line-haul rate. Based on an examination of the revenues and costs of the special service, the agency had found that there was an absence of market dominance and, accordingly, that it did not have jurisdiction over the level of the charge.

In the area of rail recyclables rates, the District of Columbia Circuit reversed a Commission decision finding that certain limitations on undue discrimination claims against railroads, including, among others, a prohibition upon actions involving rail rates applicable to different routes, did not apply to claims involving recyclables rates.¹⁷

Rail Passenger Service Act. In a case involving the interpretation of section 402(d) of the Rail Passenger Service Act,¹⁸ the D.C. Circuit reversed and remanded a Commission decision ordering a railroad to convey a line to Amtrak and exempting Amtrak's reconveyance of that line to a third party railroad.¹⁹ The court held that this taking was not authorized by section 402(d) and, accordingly, was void. The court found that the Commission's use of its condemnation power to force the conveyance of prop-

erty from one private owner to another exceeds its authority under the Rail Passenger Act. It held that Amtrak could not use that statute to bring about a change in ownership with regard to property that it does not need itself even if a private party is willing to pay for the privilege of having the property condemned. The court also found that this transaction was excluded from the scope of the section 402(d) condemnation authority because the property was to be acquired for a private railroad's use, not Amtrak's. Finally, the court concluded that Amtrak did not require a fee interest in this property to provide passenger service because Amtrak could have achieved that result by acquiring a lesser interest in the property. The Commission has petitioned the court of appeals for rehearing.

Railroad Sales. In a case of first impression, the Seventh Circuit ruled that it did not have jurisdiction over the Commission's order approving the sale of a portion of the lines owned by the bankrupt Chicago, Missouri & Western Ry. Co. to another carrier because the bankruptcy court had referred the matter of regulatory approval to the Commission and retained exclusive jurisdiction over the Chapter 11 bankruptcy proceedings.²⁰ In denying a petition for rehearing, the court also ruled that it lacked jurisdiction over the Commission's order granting terminal trackage rights, pursuant to 49 U.S.C. 11103, to the new carrier because this issue was part and parcel of the matters referred to the Commission by the bankruptcy court.²¹

¹⁶ *Shenango Inc. and Pittsburgh and Ohio Valley Railway Co. v. ICC and United States*, No. 89-3735 (U.S.C.A. 3d Cir. May 30, 1990) (per curiam), *aff'g*, *Shenango, Inc. v. Pitts., Chartiers & Yough. Ry.*, 5 I.C.C.2d 995 (1989).

¹⁷ *Consol. Rail Corp., et al. v. U.S.A. and I.C.C.*, 895 F.2d 574 (D.C. Cir. 1990), reversing *Ex Parte* No. 319, *Investigation of Fri. Rates-Recyclable Commodities*, 5 I.C.C.2d 101 (1988).

¹⁸ 45 U.S.C. 562(d).

¹⁹ *National Railroad Passenger Corp. v. Con. — Conveyance of Boston and Maine Corporation Interests in Connecticut River Line*, 4 I.C.C.2d 42 (1988) reversed sub nom., *Boston and Maine Corporation v. Interstate Commerce Commission*, No. 88-1631 (D.C. Cir. (1990)).

²⁰ See *Railway Labor Executives' Ass'n v. ICC*, 894 F.2d 915 (7th Cir. 1990), denying review of *Rio Grande Industries, Inc. — Purchase and Trackage Rights—Chicago, Missouri & Western Ry. Co. Line Between St. Louis & Chicago*, 5 I.C.C.2d 952 (1989).

²¹ *Railway Labor Executives' Ass'n v. ICC*, Nos. 89-3148 and 89-3208, U.S.C.A., 7th Cir. (decided July 12, 1990).

Railroad Mergers and Consolidations. The Fifth Circuit issued an opinion affirming two Commission decisions in the area of rail mergers and consolidations.²² In the first case, the Commission approved the leveraged buy-out of the Southern Pacific by the Rio Grande.²³ In the same order the Commission also terminated the voting trust of Southern Pacific and its order that the Southern Pacific be divested following the denial of the Santa Fe Southern Pacific merger. In the other proceeding the Commission found that the Morgan Stanley investment house would not be in control of Rio Grande despite its financing of the Rio Grande acquisition of Southern Pacific.²⁴

Railroad Accounting. In the area of railroad accounting, the D.C. Circuit upheld the Commission's 1988 amendment to its railroad costing standards for determining costs and return on value in rail abandonment and subsidy proceedings to put into effect certain recommendations of the Railroad Principles Accounting Board.²⁵ Pursuant to this change, economic or opportunity costs would now be calculated by applying the nominal, instead of the real, cost of capital to the net liquidation value of the line. The court rejected petitioner's claim that the Commission's use of the nominal cost of capital to calculate opportunity costs double-counts for inflation. The Court noted with approval that the Commission's methodology, which combines the use of an annually calculated nominal cost of capital with an adjustment that removes any gains expected from the railroad's holding the assets for one

year, appropriately adjusts opportunity costs to remove any double count.

Trucking Issues

Rates. In a highly significant case,²⁶ the Supreme Court reversed a decision applying the Commission's negotiated rates policy for motor carriers.²⁷ Under that policy, the Commission had found unreasonable the practice of failing to file tariffs covering reduced, negotiated rates, and then (usually after bankruptcy) attempting to collect charges on the basis of the higher, filed tariff rate. It was the Commission's position that collection of the higher rate would in effect reward a carrier for violating its duty to file a tariff covering the new rate. The Supreme Court's decision concluded lengthy litigation during which most of the federal courts of appeals had upheld the Commission's position. The Court's decision explicitly left open the issue of the reasonableness of the filed rates levels and is likely to result in a new course of litigation concerning the reasonableness of those rates (as opposed to motor carrier practices) involved.

In another significant rates case, the Third Circuit upheld the Commission's decision that inadvertence clauses contained in motor carrier tariffs are not *per se* illegal under 49 U.S.C. 11707 and 10730(b).²⁸ Inadvertence clauses are tariff provisions specifying that if the shipper fails to declare a value for a shipment, that shipment will be insured at the lowest rate

²² *Kansas City Southern Industries, Inc. v. ICC*, 902 F.2d 423 (5th Cir. 1990).

²³ *Rio Grande Industries, et al.—Control—SPT Co., et al.*, 4 I.C.C.2d 834 (1988).

²⁴ Finance Docket No. 31243, *Declaratory Order—Control—Rio Grande Industries, Inc.* (not printed), served August 25, 1988.

²⁵ *Commonwealth of Mass. v. ICC*, 893 F.2d 1368 (D.C. Cir. 1990), *aff'g*, *Abandonment Regulations—Costing*, 5 I.C.C.2d 123 (1988).

²⁶ *Maislin Industries v. Primary Steel, Inc.*, 110 S.Ct. 884 (1990).

²⁷ No. MC-C-10961, *Primary Steel, Inc. v. Maislin Industries, U.S. Inc. et al.* (not printed), served January 19, 1988, *aff'd* *Maislin Industries, U.S. Inc., et al. v. Primary Steel, Inc.*, 705 F. Supp. 1401 (W.D. Mo. 1988), *aff'd* *Maislin Industries, U.S. Inc. v. Primary Steel, Inc.*, 879 F.2d 400 (8th Cir. 1989).

²⁸ See *National Small Shipments Traffic Conference, Inc. v. United States*, 887 F.2d 443 (3d. Cir. 1989), *affirming* MC-C-30102, *National Small Shipments Traffic Conference, Inc., et al. v. Consolidated Freightways Corp., et al.* (not printed), served January 23, 1989.

permitted in the tariff. Finding no clear legislative intent on the question, the court accorded deference to the Commission's conclusion that a bill of lading, taken together with a tariff containing an inadvertence clause, constitutes a written agreement consonant with the statute. Subsequently, the Supreme Court denied a petition for a writ of certiorari.

Discontinuance of Service. The D.C. Circuit in another important motor carrier case, affirmed a Commission decision allowing United Parcel Service ("UPS") to discontinue its common carrier service for shipments of fireworks.²⁹ The Commission had approved UPS's tariff canceling this service in light of the operational burdens associated with fireworks handling and the availability of other, but more expensive, trucking services. On review, the court agreed that the common carrier's obligation to serve was not absolute, but only required reasonable levels of service. In light of the regulatory policy and competitive climate envisioned in the Motor Carrier Act of 1980, the court affirmed the Commission's departure from its earlier policy of rigidly requiring carriers to serve to the full extent of their licenses.

Operating Authority Revocation. In a motor carrier enforcement case, the Third Circuit substantially affirmed³⁰ the Commission's decision to revoke the operating authority of a motor carrier and bar its principal from engaging in motor carrier transportation activities within the ICC's jurisdiction.³¹ This principal, whose transportation companies had been the subject of investigations by the Com-

mission for 20 years, had attempted to use corporate shells to circumvent a Commission order revoking the motor carrier authority of one of his companies.

Although debarment of an individual is not specifically authorized by the Interstate Commerce Act, the court agreed that the Commission has authority to take actions that are not explicitly enumerated in the Interstate Commerce Act, as long as they are legitimate, reasonable, and directly adjunct to its explicit statutory power, and may use these adjunct powers to protect the integrity of its jurisdiction. In addition, the court found that the Commission had express statutory authority to investigate this principal and his companies and to compel compliance with its orders and the law pursuant to which those orders were issued.

Insurance. In response to a complaint and an emergency motion filed by certain offshore insurance companies, the D.C. Circuit enjoined the Commission,³² pending further order of that court, from interpreting the insurance regulations to exclude those excess and surplus line insurance carriers, who are also not authorized by any state as primary line insurance carriers, from providing statutorily required insurance for regulated motor carriers. The court granted the Commission's motion to hold the proceeding on this complaint in abeyance³³ pending a final decision in a rulemaking proceeding that the Commission recently had instituted.³⁴ In this rulemaking the Commission will reexamine its policies and regulations governing eligibility to serve as insurers of regulated motor carriers.

²⁹ *B.J. Alan Co., Inc., et al. v. ICC*, 897 F.2d 561 (D.C. Cir. 1990), *aff'g* *B.J. Alan Co., et al. v. United Parcel Service, et al.*, 5 I.C.C.2d 700 (1989).

³⁰ The court remanded the Commission's decision for the sole purpose of narrowing and tailoring the Commission's order to exclude transportation activities that are wholly unrelated to those that were involved in this case.

³¹ See *Ralph J. Zola, et al. — Show Cause Proceeding*, 5 I.C.C.2d 655 (1989), *aff'd* *Zola v. ICC*, 889 F.2d 508 (3d Cir. 1989), *cert. denied*, 110 S.Ct. 2207 (1990).

³² *Owner-Operator Services, Inc., et al. v. Interstate Commerce Commission and United States of America*, No. 90-1274 (D.C. Cir. June 8, 1990).

³³ *Owner-Operator Services, Inc., et al. v. Interstate Commerce Commission and United States of America*, No. 90-1274 (D.C. Cir. August 1, 1990).

³⁴ *Ex Parte* No. MC-5 (Sub-No. 11), *Revision of Regulations Governing Insurance and Surety Companies Making ICC Filings* (not printed), served July 16, 1990.

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APPENDIX A

Commission Organization

The major bureaus and offices of the Commission are listed below. Heads of each Bureau or Office report to the Chairman via the channels indicated on the organization chart. The list reflects the Commission's organization as of September 30, 1990.

OFFICE OF THE CHAIRMAN

| | |
|----------------------------------|-------------------|
| Chairman | Edward J. Philbin |
| Chief of Staff | Jon R. Stover |
| Confidential Assistant | Carol A. Barling |
| Attorney Advisor | Laura Cooper |

OFFICE OF THE VICE CHAIRMAN

| | |
|-------------------------------|------------------------|
| Vice Chairman | Karen Borlaug Phillips |
| Chief of Staff | Debra A. Weiner |
| Executive Assistant | Marie C. Anderson |
| Attorney Advisor | Samuel E. Eastman |
| Staff Economist | Janie A. McCutchen |
| Rotating Attorney | Paul R. Joyce |

OFFICE OF COMMISSIONER SIMMONS

| | |
|----------------------------------|-------------------|
| Commissioner | J. J. Simmons III |
| Chief of Staff | Thomas T. Vining |
| Confidential Assistant | Hazel M. Lowe |
| Secretarial Assistant | Rebecca W. Powell |
| Attorney Advisor | Van A. Bosco |
| Attorney Advisor | Ricky L. Crawford |

OFFICE OF COMMISSIONER LAMBOLEY

| | |
|----------------------------------|--------------------|
| Commissioner | Paul H. Lamboley |
| Confidential Assistant | Lucy Ann Aloï |
| Secretarial Assistant | Lorelei Ransome |
| Attorney-Advisor | Dixie Horton |
| Attorney-Advisor | Theodore K. Kalick |

OFFICE OF COMMISSIONER EMMETT

| | |
|---------------------------------|------------------------|
| Commissioner | Edward M. Emmett |
| Chief of Staff | Robert A. Voltmann |
| Special Assistant | Kay L. Killen |
| Secretarial Assistant | Lenore M. Cummings |
| Attorney Advisor | William A. Mullins |
| Attorney Advisor | J. Courtney Cunningham |

OFFICE OF COMMISSIONER McDONALD*

| | |
|----------------------------------|------------------------|
| Commissioner | Gail Clements McDonald |
| Chief of Staff | Dixie Horton |
| Confidential Assistant | Vera Dowhan |
| Secretarial Assistant | Lorelei Hansome |
| Rotating Attorney | Beryl Gordon |

*Commissioner McDonald (Democrat of Oklahoma) was nominated by President Bush and confirmed by the Senate replacing Commissioner Lamboley whose term had expired. Commissioner Lamboley resigned from the Commission on October 1, 1990. Commissioner McDonald took the oath-of-office on October 5, 1990.

STAFF OFFICIALS

OFFICE OF COMPLIANCE AND CONSUMER ASSISTANCE

| | |
|---|-------------------|
| Director | Bernard Gaillard |
| Associate Director | William J. Love |
| Deputy Director, Section of Operations | Heber P. Hardy |
| Deputy Director, Section of Enforcement | Charles E. Wagner |

OFFICE OF CONGRESSIONAL AND LEGISLATIVE AFFAIRS

| | |
|---|-------------------------|
| Assistant to the Chairman and Director | H. Spofford Canfield IV |
| Special Assistant | Sandy K. Baruah |
| Administrative Assistant | Carolyn I. Johnson |
| Staff Assistant | Lindanetta Sutton |
| Deputy Director, Congressional Affairs | M. Joy Carabasi |
| Associate Director, Congressional Affairs | Jeanne P. Kowalski |
| Legislative Counsel | Patricia A. Hahn |

OFFICE OF ECONOMICS

| | |
|---|------------------------|
| Director | Howard K. Face |
| Assistant to the Director, Administration | Aubrey H. Herndon, Jr. |
| Assistant to the Director, Policy Review | Leslie J. Selzer |
| Administrative Officer | Hildred I. Smith |
| Deputy Director, Economics | Edward E. Guthrie |
| Acting Deputy Director, Analysis | Leland L. Gardner |
| Chief, Section of Audit and Accounting | William F. Moss, III |
| Chief, Section of Financial Analysis | Ward L. Ginn |
| Chief, Section of Rail Costing | William T. Bono |
| Chief, Section of Rail Services Planning | Michael E. Sullivan |
| Chief, Section of Energy and Environment | Elaine K. Kaiser |
| Chief, Section of Research and Analysis | Michael A. Redisch |

OFFICE OF EXTERNAL AFFAIRS

| | |
|---|------------------|
| Assistant to the Chairman and Director | Peggy M. Venable |
| External Affairs Assistant | Diane W. Fennell |
| Associate Director, Intergovernmental Affairs | Zeda Homoki |
| Associate Director, Public Affairs | Alvin H. Brown |
| Associate Director, Public Affairs | A. Dennis Watson |
| Staff Assistant | Sherry Rankine |

OFFICE OF THE GENERAL COUNSEL

| | |
|--|------------------|
| General Counsel | Robert S. Burk |
| Deputy General Counsel | Henri F. Rush |
| Associate General Counsel | Ellen D. Hanson |
| Deputy Associate General Counsel | John J. McCarthy |
| Deputy Associate General Counsel | Craig M. Keats |

OFFICE OF HEARINGS

Chief Administrative Law Judge Paul S. Cross

OFFICE OF HUMAN RELATIONS

Director Alexander W. Dobbins
EEO Manager Gideon Ferebee
EEO Assistant/Spanish Speaking Coordinator . . . Lydia A. Wright

OFFICE OF THE INSPECTOR GENERAL

Inspector General James J. McKay
Assistant Inspector General for Audit. Robert Merson

OFFICE OF THE MANAGING DIRECTOR

Managing Director H. J. Rhodes
Privacy/FOIA Officer. S. Arnold Smith
Director, Personnel Office Richard H. Mooers
Chief, Budget and Fiscal Office. Anthony Jacobik, Jr.
Chief, Section of Administrative Services Virgil L. Schultz
Chief, Section of Systems Development Edward F. Welkener
Executive Secretariat Noreta R. McGee

OFFICE OF PROCEEDINGS

Director David M. Konschnik
Deputy Director, Motor Section Richard B. Felder
Deputy Director, Rail Section Joseph H. Dettmar

OFFICE OF PUBLIC ASSISTANCE

Acting Director Dan G. King

OFFICE OF THE SECRETARY

Secretary Sidney L. Strickland
Assistant Secretary Kathleen M. King
Chief, Commission Service Section Darlene F. Proctor
Chief, Public Records Section. Edward C. Fernandez

BUREAU OF TRAFFIC

Director Neil S. Llewellyn
Chief, Section of Tariffs Charles E. Langyher III
Chief, Section of Rates and Informal Cases . . . Lawrence C. Herzig

**DIRECTORY OF INTERSTATE COMMERCE COMMISSION
FIELD OFFICES AND REGIONAL HEADQUARTERS****EASTERN REGION**

| | |
|--|---|
| Regional Headquarters | Richard M. Biter Regional Director 3535 Market Street Room 16400 Philadelphia, PA 19104 |
| Atlanta | Peachtree Twenty-Fifth Building 1371 Peachtree Street, N.E. Room 638 Atlanta, GA 30309 |
| Baltimore | 1025 Fallon Federal Building Charles Center 31 Hopkins Plaza Baltimore, MD 21201 |
| Boston | Boston Federal Office Building 10 Causeway Street Room 1015 Boston, MA 02222 |
| Charlotte | Room CC-516 Mart Office Building 800 Briar Creek Road Charlotte, NC 28205 |
| Cleveland | Commerce Plaza Room 310 7123 Pearl Road Middleburg Heights, OH 44119 |
| Jacksonville | 4057 Carmichael Avenue Suite 233 Jacksonville, FL 32207 |
| New York | Jacob K. Javits Federal Building 26 Federal Plaza Room 1807 New York, NY 10278 |

**DIRECTORY OF INTERSTATE COMMERCE COMMISSION
FIELD OFFICES AND REGIONAL HEADQUARTERS.—Continued****CENTRAL REGION**

| | |
|------------------------------------|--|
| Regional Headquarters | William Redmond, Jr. Regional Director Everett McKinley Dirksen Bldg. 219 South Dearborn Street Room 1304 Chicago, IL 60604 |
| Fort Worth | 411 West 7th Street Suite 510 Fort Worth, TX 76102 |
| Indianapolis | Federal Bldg. & U.S. Courthouse 46 East Ohio Street Room 429 Indianapolis, IN 46204 |
| Kansas City | 2111 Federal Building 911 Walnut Street Kansas City, MO 64106 |
| Minneapolis | Federal Bldg. & U.S. Courthouse 110 South Fourth Street Room 475 Minneapolis, MN 55401 |
| Omaha | Federal Office Building Room 728 106 South 15th Street Omaha, NE 68102 |
| St. Louis | 1222 Spruce Street First Floor Room 207 St. Louis, MO 63103 |

**DIRECTORY OF INTERSTATE COMMERCE COMMISSION
FIELD OFFICES AND REGIONAL HEADQUARTERS.—Continued**

WESTERN REGION

| | |
|--|---|
| Regional Headquarters | John H. Kirkemo Regional Director 211 Main Street Suite 500 San Francisco, CA 94105 |
| Denver | Federal Office Building 1961 Stout Street Room 440 Denver, CO 80294 |
| Los Angeles | Suite 304 360 East 2nd Street Los Angeles, CA 90012 |
| Salt Lake City | 2414 Federal Building 125 S. State Street Salt Lake City, UT 84138 |
| Seattle | 1894 Federal Building 915 Second Avenue Seattle, WA 98174 |

INTERSTATE COMMERCE COMMISSIONERS 1887-1990

| Interstate Commerce Commissioners | State | Party | Oath of Office | End of Service |
|-----------------------------------|--------|-------|----------------|----------------|
| 1. COOLEY, Thomas M. | Mich. | Rep. | Mar. 31, 1887 | Jan. 12, 1892 |
| 2. MORRISON, William R. | Ill. | Dem. | Mar. 31, 1887 | Dec. 31, 1897 |
| 3. SCHOONMAKER, Augustus | N.Y. | Dem. | Dec. 31, 1887 | Dec. 31, 1890 |
| 4. WALKER, Aldace F. | Vt. | Rep. | Mar. 31, 1887 | Mar. 31, 1889 |
| 5. BRAGG, Walter L. | Ala. | Dem. | Mar. 31, 1887 | Aug. 21, 1891 |
| 6. VEAZEY, Wheelock G. | Vt. | Rep. | Sept. 10, 1889 | Dec. 20, 1896 |
| 7. KNAPP, Martin A. | N.Y. | Rep. | Mar. 2, 1891 | Dec. 12, 1910 |
| 8. McDILL, James W. | Ill. | Rep. | Jan. 13, 1892 | Feb. 28, 1894 |
| 9. CLEMENTS, Judson C. | Ga. | Dem. | Mar. 17, 1892 | June 18, 1917 |
| 10. YEOMANS, James D. | Iowa | Dem. | May 2, 1894 | Mar. 6, 1905 |
| 11. PROUTY, Charles A. | Vt. | Rep. | Dec. 21, 1896 | Feb. 2, 1914 |
| 12. CALHOUN, William J. | Ill. | Rep. | Mar. 21, 1898 | Sept. 30, 1899 |
| 13. FIFER, Joseph W. | Ill. | Rep. | Nov. 4, 1899 | Dec. 30, 1905 |
| 14. COCKRELL, Francis M. | Mo. | Dem. | Mar. 11, 1905 | Dec. 31, 1910 |
| 15. LANE, Franklin K. | Calif. | Dem. | July 2, 1906 | Mar. 5, 1913 |
| 16. CLARK, Edgar E. | Iowa | Rep. | July 31, 1906 | Aug. 13, 1921 |
| 17. HARLAN, James S. | Ill. | Rep. | Aug. 28, 1906 | Dec. 31, 1918 |
| 18. McCHORD, Charles C. | Ky. | Dem. | Dec. 31, 1910 | Jan. 1, 1926 |
| 19. MEYER, Balthasar H. | Wis. | Rep. | Dec. 31, 1910 | Apr. 30, 1939 |
| 20. MARBLE, John H. | Calif. | Dem. | Mar. 10, 1913 | Nov. 21, 1913 |
| 21. HALL, Henry C. | Colo. | Dem. | Mar. 21, 1914 | Jan. 13, 1928 |
| 22. DANIELS, Winthrop M. | N.J. | Dem. | Apr. 6, 1914 | July 1, 1923 |
| 23. AITCHISON, Clyde B. | Oreg. | Rep. | Oct. 5, 1917 | July 10, 1952 |
| 24. WOOLLEY, Robert W. | Va. | Dem. | Oct. 5, 1917 | Dec. 31, 1920 |
| 25. ANDERSON, George W. | Mass. | Dem. | Oct. 15, 1917 | Nov. 5, 1918 |
| 26. EASTMAN, Joseph B. | Mass. | Ind. | Feb. 17, 1919 | Mar. 15, 1944 |
| 27. FORD, Henry J. | N.J. | Dem. | June 11, 1920 | Mar. 4, 1921 |
| 28. POTTER, Mark W. | N.Y. | Dem. | June 24, 1920 | Feb. 20, 1925 |
| 29. ESCH, John J. | Wis. | Rep. | Mar. 28, 1921 | May 29, 1928 |
| 30. CAMPBELL, Johnston B. | Wash. | Rep. | May 5, 1921 | Jan. 13, 1930 |
| 31. LEWIS, Ernest I. | Ind. | Rep. | May 5, 1921 | Dec. 31, 1932 |
| 32. COX, Frederick I. | N.J. | Rep. | Sept. 1, 1921 | Dec. 31, 1928 |
| 33. McMANAMY, Frank | D.C. | Dem. | June 28, 1923 | Apr. 30, 1939 |
| 34. WOODLOCK, Thomas F. | N.Y. | Dem. | Apr. 1, 1925 | Aug. 31, 1930 |
| 35. TAYLOR, Richard V. | Ala. | Dem. | Jan. 16, 1926 | Dec. 31, 1929 |
| 36. BRAINERD, Ezra Jr. | Okla. | Rep. | Feb. 23, 1927 | Dec. 31, 1933 |
| 37. PORTER, Claude R. | Iowa | Dem. | Jan. 28, 1928 | Aug. 17, 1946 |
| 38. FARRELL, Patrick J. | D.C. | Dem. | June 7, 1928 | Dec. 31, 1934 |
| 39. LEE, William E. | Idaho | Rep. | Jan. 18, 1930 | Aug. 18, 1953 |
| 40. TATE, Hugh M. | Tenn. | Rep. | Feb. 28, 1930 | Sept. 16, 1937 |

| Interstate Commerce Commissioners | State | Party | Oath of Office | End of Service |
|-----------------------------------|--------|-------|----------------|----------------|
| 41. MAHAFFIE, Charles D. | D.C. | Dem. | Sept. 2, 1930 | Dec. 31, 1954 |
| 42. MILLER, Carroll | Pa. | Dem. | June 14, 1933 | Dec. 24, 1949 |
| 43. SPLAWN, Walter M.W. | Tex. | Dem. | Feb. 1, 1934 | June 30, 1953 |
| 44. CASKIE, Marion M. | Ala. | Dem. | Aug. 26, 1935 | Mar. 31, 1940 |
| 45. ROGERS, John L. | Tenn. | Rep. | Sept. 16, 1937 | Apr. 30, 1952 |
| 46. ALLDREDGE, J. Haden | Ala. | Dem. | May 1, 1939 | Oct. 31, 1955 |
| 47. PATTERSON, William J. | N.D. | Ind. | July 31, 1939 | July 10, 1953 |
| 48. JOHNSON, J. Monroe | S.C. | Dem. | June 3, 1940 | June 4, 1956 |
| 49. BARNARD, George M. | Ind. | Rep. | Dec. 2, 1944 | Jan. 2, 1949 |
| 50. MITCHELL, Richard F. | Iowa | Dem. | Feb. 3, 1947 | June 15, 1959 |
| 51. CROSS, Hugh W. | Ill. | Rep. | Apr. 11, 1949 | Nov. 25, 1955 |
| 52. KNUDSON, James K. | Utah | Rep. | Apr. 20, 1950 | May 22, 1954 |
| 53. ELLIOTT, Kelso | Ind. | Rep. | July 10, 1952 | Feb. 29, 1956 |
| 54. ARPAIA, Anthony F. | Conn. | Dem. | July 11, 1952 | Mar. 15, 1960 |
| 55. CLARKE, Owen | Wash. | Rep. | July 10, 1953 | Jan. 15, 1958 |
| 56. FREAS, Howard G. | Calif. | Rep. | Aug. 18, 1953 | Dec. 31, 1966 |
| 57. TUGGLE, Kenneth H. | Ky. | Rep. | Sept. 8, 1953 | July 31, 1975 |
| 58. WINCHELL, John H. | Colo. | Rep. | July 28, 1954 | Apr. 3, 1961 |
| 59. HUTCHINSON, EVERETT | Tex. | Dem. | Feb. 1, 1955 | Mar. 31, 1965 |
| 60. MURPHY, Rupert L. | Ga. | Dem. | Dec. 30, 1955 | Aug. 31, 1978 |
| 61. MINOR, Robert W. | Ohio | Rep. | Feb. 15, 1956 | Sept. 30, 1958 |
| 62. WALRATH, Laurence K. | Fla. | Dem. | Mar. 29, 1956 | June 30, 1972 |
| 63. McPHERSON, Donald P., Jr. | Pz | Rep. | June 4, 1956 | Mar. 29, 1963 |
| 64. GOFF, Abe McGregor | Idaho | Rep. | Feb. 12, 1958 | July 30, 1967 |
| 65. WEBB, Charles A. | Va. | Rep. | Sept. 30, 1958 | Mar. 31, 1967 |
| 66. HERRING, Clyde E. | Iowa | Dem. | Sept. 21, 1959 | May 25, 1964 |
| 67. BUSH, John W. | Ohio | Dem. | Apr. 3, 1961 | Nov. 2, 1972 |
| 68. TUCKER, William H. | Mass. | Dem. | Apr. 3, 1961 | Dec. 31, 1967 |
| 69. TIERNEY, Paul J. | Md. | Rep. | Mar. 29, 1963 | Feb. 28, 1970 |
| 70. BROWN, Virginia Mae | W.Va. | Dem. | May 25, 1964 | July 23, 1979 |
| 71. DEASON, Willard | Tex. | Dem. | Sept. 8, 1965 | July 31, 1975 |
| 72. STAFFORD, George M. | Kans. | Rep. | Apr. 26, 1967 | Aug. 31, 1980 |
| 73. SYPHERS, Grant E. | Calif. | Rep. | July 31, 1967 | Feb. 5, 1968 |
| 74. HARDIN, Dale W. | Ill. | Rep. | July 31, 1967 | Aug. 31, 1977 |
| 75. BURKE, Wallace R. | Conn. | Dem. | Aug. 21, 1968 | June 28, 1969 |
| 76. JACKSON, Donald L. | Calif. | Rep. | Mar. 20, 1969 | June 30, 1972 |
| 77. GRESHAM, Robert C. | Md. | Rep. | Dec. 15, 1969 | June 18, 1982 |
| 78. BREWER, W. Donald | Colo. | Rep. | July 23, 1970 | June 30, 1974 |
| 79. WIGGIN, Chester M., Jr. | N.H. | Rep. | Oct. 24, 1972 | July 31, 1973 |
| 80. McFARLAND, Alfred T. | Tenn. | Ind. | Nov. 1, 1972 | Nov. 10, 1977 |
| 81. MONTEJANO, Rodolfo | Calif. | Dem. | Nov. 3, 1972 | Mar. 2, 1973 |
| 82. O'NEAL, A. Daniel, Jr. | Wash. | Dem. | Apr. 12, 1973 | Dec. 31, 1979 |
| 83. CLAPP, Charles L. | Mass. | Rep. | Mar. 14, 1974 | Mar. 19, 1982 |

INTERSTATE COMMERCE COMMISSIONERS **1887-1990.—Continued**

| Interstate Commerce Commissioners | State | Party | Oath of Office | End of Service |
|------------------------------------|--------|-------|---------------------------------|----------------|
| 84. CORBER, Robert J. | Va. | Rep. | Mar. 13, 1975 | Dec. 1, 1976 |
| 85. CHRISTIAN, Betty Jo | Tex. | Dem. | Apr. 7, 1976 | Dec. 31, 1979 |
| 86. TRANTUM, Thomas A. | Conn. | Rep. | July 23, 1979 | July 31, 1981 |
| 87. GASKINS, Darius W. | D.C. | Dem. | July 23, 1979 | Feb. 1, 1981 |
| 88. ALEXIS, Marcus | Ill. | Dem. | Aug. 27, 1979 | June 30, 1981 |
| 89. GILLIAM, Reginald E. | Va. | Dem. | Apr. 21, 1980 | Feb. 1, 1983 |
| 90. TAYLOR, Reese H., Jr. | Nev. | Rep. | June 25, 1981 | Dec. 31, 1985 |
| 91. STERRETT, Malcolm M.B. | Md. | Rep. | Feb. 12, 1982 | Aug. 11, 1988 |
| 92. ANDRE, Frederic N. | Ind. | Rep. | Mar. 19, 1982 | Nov. 21, 1989 |
| 93. SIMMONS, J.J. III ³ | Okla. | Dem. | Apr. 27, 1982 Sept. 10, 1984 | Feb. 28, 1983 |
| 94. GRADISON, Heather J. | Ohio | Rep. | June 18, 1982 | Feb. 12, 1990 |
| 95. LAMBOLEY, Paul H. | Nev. | Dem. | Sept. 11, 1984 | Oct. 1, 1990 |
| 96. STRENIO, Andrew J. Jr. | Md. | Dem. | Sept. 14, 1984 | Dec. 31, 1985 |
| 97. PHILLIPS, Karen B. | Va. | Rep. | Aug. 11, 1988 | |
| 98. EMMETT, Edward M. | Tex. | Rep. | Nov. 21, 1989 | |
| 99. PHILBIN, Edward J. | Calif. | Rep. | Feb. 12, 1990 | |
| 100. McDONALD, Gail C. | Okla. | Dem. | Oct. 5, 1990 | |

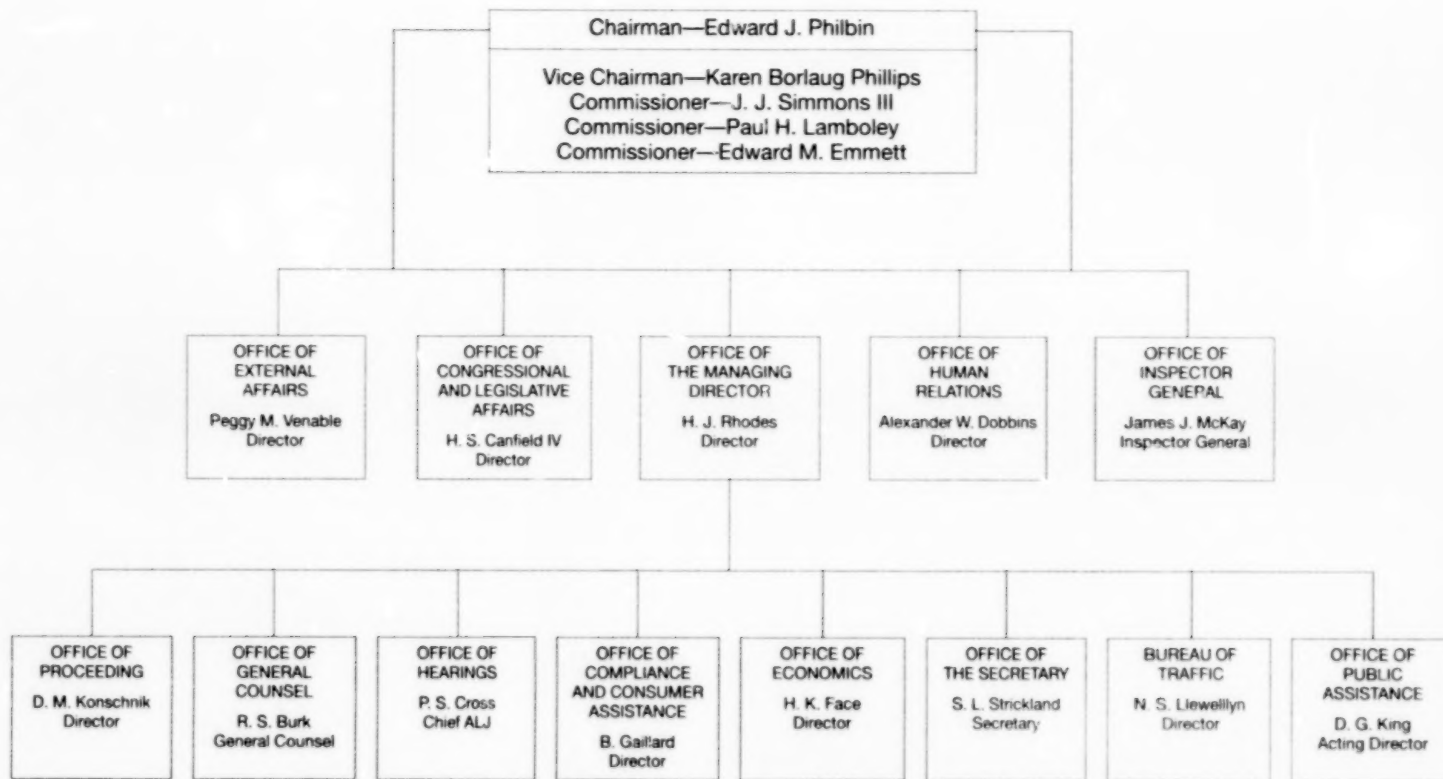
¹ Recess appointment only, not confirmed.

² Recess appointment only, not confirmed.

³ Commissioner Simmons resigned as a Commission member in February 1983 following his confirmation as Under Secretary of the Department of the Interior. He rejoined the Commission in September 1984 following his Presidential appointment and Senate confirmation.

INTERSTATE COMMERCE COMMISSION

Organizational Chart



APPENDIX B

COMMISSION WORKLOAD

TABLE 1.—Distribution by Method of Disposition of Proceedings/Cases Opened and Closed During Fiscal Year 1990.

| MOTOR MATTERS | | | | | |
|---------------------------------------|-----------|---------|------------|--------------------------------|--------|
| Case Type | Open-ings | Opposed | Closings | | Total |
| | | | Unop-posed | Dismissed Rejected/ With-drawn | |
| Rulemakings | 14 | 5 | 4 | 0 | 10 |
| Motor Property Licensing: | | | | | |
| Initial Common | 4,309 | 3 | 4,029 | 123 | 4,155 |
| Initial Contract | 7,305 | 5 | 6,786 | 309 | 7,100 |
| Extension Common | 507 | 0 | 423 | 93 | 516 |
| Extension Contract | 495 | 1 | 417 | 89 | 507 |
| Motor Passenger Licensing: | | | | | |
| Initial Common | 657 | 2 | 623 | 20 | 645 |
| Initial Contract | 112 | 0 | 107 | 3 | 110 |
| Extension Common | 105 | 4 | 65 | 8 | 77 |
| Extension Contract | 6 | 0 | 5 | 0 | 5 |
| Passenger Carrier Exit | 5 | 5 | 0 | 0 | 5 |
| Water Carrier Licensing | 15 | 1 | 8 | 0 | 9 |
| Freight Forwarder Licensing | 54 | 0 | 36 | 8 | 44 |
| Property Broker Licensing: | | | | | |
| Initial | 3,522 | 1 | 3,421 | 30 | 3,452 |
| Extension | 33 | 0 | 28 | 2 | 30 |
| Motor Carrier Complaints: | | | | | |
| Rate: Ex Parte MC-177 | 99 | 40 | 0 | 33 | 73 |
| Interstate/Intrastate | 1 | 1 | 1 | 0 | 2 |
| Other | 3 | 5 | 5 | 3 | 13 |
| Restriction Removal | 3 | 0 | 0 | 3 | 3 |
| Investigation & Suspension | 4 | 4 | 0 | 0 | 4 |
| Motor Rate | 35 | 0 | 10 | 5 | 25 |
| Passenger Rate Review | 2 | 1 | 0 | 0 | 1 |
| Motor Carrier Finance | 198 | 2 | 177 | 27 | 206 |
| Small Carrier Transfer | 720 | 0 | 658 | 69 | 727 |
| Motor Finance Temporary | | | | | |
| Authority | 51 | 2 | 44 | 4 | 50 |
| Rate Bureau | 0 | 1 | 6 | 1 | 8 |
| Other Motor Matters | 4 | 0 | 4 | 0 | 4 |
| Total | 18,259 | 94 | 16,857 | 830 | 17,781 |

¹ Includes 193 exemptions according to docket Ex Parte No. 55 (Sub-No. 57).

² The Commission granted final approval in seven proceedings and revoked the antitrust immunity in one other proceeding. The Commission also continued provisional approval in two proceedings, and modified conditions previously imposed in one other proceeding.

TABLE 1.—Distribution by Method of Disposition of Proceedings/Cases Opened and Closed During Fiscal Year 1990.—Continued

| Case Type | RAIL MATTERS | | | |
|-----------------------------------|-----------------------|------------------------|------------|-------------|
| | Openings ¹ | Decisions ² | | |
| | | Pending | Procedural | Substantive |
| Rulemakings | 13 | 35 | 36 | 69 |
| Abandonments: | | | | |
| Non-NERSA ³ | 17 | 11 | 35 | 70 |
| Conrail under NERSA | 1 | 0 | 0 | 6 |
| Exemptions ⁴ | 125 | 29 | 30 | 356 |
| Rates: | | | | |
| Complaints, Declaratory | | | | |
| Orders, Investigations and | | | | |
| Rate Bureau Activity | 15 | 40 | 119 | 37 |
| Investigations and | | | | |
| Suspensions | 1 | 2 | 2 | 3 |
| Exemptions | 3 | 0 | 0 | 3 |
| Finance Docket: | | | | |
| Exemptions ⁵ | 178 | 37 | 31 | 206 |
| Other ⁶ | 49 | 45 | 97 | 56 |
| Total | 402 | 199 | 350 | 806 |

Source of Data: Office of Proceedings computer data bases.

¹ Excludes filings rejected by letter, reopenings and court remands.

² Where a single decision has embraced proceedings, the decision is counted only once. Ministerial corrections, notices of court action, or miscellaneous notices are not included in these totals.

³ North East Rail Service Act.

⁴ Includes petitions and notices of exemption.

⁵ Includes petitions and notices of exemption.

⁶ Includes mergers and consolidations, feeder line acquisitions, arbitration review proceedings, petitions seeking declaratory orders, and other financial transactions.

TABLE 2.—Informal Proceedings.

| | Fiscal Year 1988 | Fiscal Year 1989 | Fiscal Year 1990 |
|--|------------------------|------------------------|------------------------|
| Applications for motor temporary authority: | | | |
| Filed | 3,538 | 3,976 | 4,173 |
| Disposed of | 3,552 | 3,986 | 4,126 |
| Pending at end of year | 170 | 160 | 207 |
| Petitions in applications for motor temporary authority (received at ICC headquarters): | | | |
| Filed | 8 | 2 | 3 |
| Disposed of | 7 | 3 | 3 |
| Pending at end of year | 1 | 0 | 0 |

Source of Data: Office of Compliance and Consumer Assistance.



TABLE 3.—Tariff Schedules, Fiscal Year 1990.

| | Received | Criticized | Rejected |
|---|-----------|------------|----------|
| Freight: | | | |
| Common Carrier Tariffs: | | | |
| Rail | 112,388 | 78 | 1,987 |
| Motor | 1,156,366 | 5,513 | 8,348 |
| Water | 32,855 | 21 | 163 |
| Freight Forwarder | 402 | 32 | 28 |
| International Ocean-Land Intermodal | 76,276 | 0 | 1 |
| Total | 1,451,52 | 5,644 | 10,527 |
| Contract Carrier Filings: | | | |
| Rail Contracts | 34,249 | 213 | 44 |
| Rail Summaries | 38,976 | 2,258 | 45 |
| Total | 73,225 | 2,471 | 89 |
| Passenger Tariffs: | | | |
| Rail | 9 | 16 | 7 |
| Motor | 3,180 | 114 | 73 |
| Water | 18 | 0 | 0 |
| Total | 3,207 | 130 | 80 |
| Grand total | 1,454,719 | 8,245 | 10,696 |

Source of Data: Bureau of Traffic statistical reports.

TABLE 4.—Action Taken on Proposals (Protested and Non-Protested) Considered for Suspension and/or Investigation.

| | Suspensions—Fiscal Year 1990 | | | | |
|---|------------------------------|-------|-------|-------|---------|
| | Rail | Motor | Water | Total | Percent |
| Suspended | 1 | 4 | 2 | 7 | 10 |
| Not suspended or investigated ¹ | 7 | 2 | 3 | 12 | 17 |
| Not suspended but investigated ¹ | 5 | 16 | 0 | 21 | 30 |
| Otherwise disposed of ² | 1 | 27 | 2 | 30 | 43 |
| Total | 14 | 49 | 7 | 70 | 100 |

Source of Data: Bureau of Traffic statistical reports.

¹ Permitted to become effective.² Includes three proposals canceled by proponent and 27 proposals reviewed.

TABLE 5.—Informal Rate Cases Branch (Bureau of Traffic—Fiscal Year 1990).

| | |
|--|------|
| Rate cases general: | |
| On hand beginning of year | 147 |
| Received during year | 5408 |
| Disposed of during year | 5377 |
| Pending at end of year | 178 |
| Informal complaints and statements of claimed damages: | |
| On hand beginning of year | 0 |
| Received during year | 9 |
| Disposed of during year | 9 |
| Pending at end of year | 0 |
| Special docket cases: | |
| On hand beginning of year | 33 |
| Received during year | 508 |
| Disposed of during year | 495 |
| Pending at end of year | 46 |

Source of Data: Bureau of Traffic statistical reports.



TABLE 6.—ICC Unit of the National Defense Executive Reserve (NDER).

| | Fiscal Year 1988 On Roll | Fiscal Year 1989 On Roll | Fiscal Year 1990 On Roll |
|-----------------|--------------------------------|--------------------------------|--------------------------------|
| NDER Group | | | |
| Rail | 383 | 328 | 275 |
| Motor | 94 | 86 | 69 |
| Water | 28 | 23 | 19 |

Source: Office of Compliance and Consumer Assistance.

TABLE 7.—Car Supply—Cars Installed, Retired, and Ordered, Class I Railroads.

| | Fiscal Year | | | |
|------------------------|-------------|--------|--------|--------|
| | 1975 | 1980 | 1985 | 1990 |
| Cars Installed: | | | | |
| Box | 13,060 | 7,646 | 0 | 989 |
| Refrigerator | 2,180 | 126 | 2 | 0 |
| Gondola | 4,928 | 5,456 | 703 | 3,663 |
| Hopper | 10,075 | 9,656 | 125 | 2,582 |
| Covered Hopper | 7,143 | 9,002 | 100 | 1,083 |
| Flat | 2,037 | 1,036 | 69 | 275 |
| Other | 240 | 970 | 0 | 0 |
| Total Cars | 39,663 | 33,892 | 999 | 8,592 |
| Cars Retired: | | | | |
| Box | 25,112 | 35,112 | 28,902 | 15,052 |
| Refrigerator | 1,260 | 2,882 | 9,403 | 3,521 |
| Gondola | 7,830 | 8,883 | 12,060 | 4,373 |
| Hopper | 1,572 | 18,796 | 31,133 | 9,151 |
| Covered Hopper | 3,328 | 3,114 | 5,089 | 6,672 |
| Flat | 5,965 | 3,451 | 412 | 3,076 |
| Other | 1,626 | 2,338 | 1,533 | 1,103 |
| Total Cars | 72,223 | 74,576 | 88,532 | 42,948 |
| Cars Ordered: | | | | |
| Box | 9,171 | 3,911 | 0 | 1,489 |
| Refrigerator | 350 | 46 | 0 | 0 |
| Gondola | 7,251 | 5,302 | 240 | 3,663 |
| Hopper | 20,279 | 6,289 | 125 | 1,809 |
| Covered Hopper | 4,164 | 7,652 | 100 | 1,080 |
| Flat | 3,571 | 512 | 67 | 275 |
| Other | 6,628 | 320 | 0 | 0 |
| Total Cars | 51,414 | 24,032 | 532 | 8,316 |

Source: Association of American Railroads.

TABLE 8.—Ownership, Serviceable Ownership, and Turnaround Time, Class I Railroads.

| | Fiscal Year | | | |
|------------------------|---------------|-----------|---------|---------|
| | 1975 | 1980 | 1985 | 1990 |
| Ownership: | | | | |
| Plain Box | 315,006 | 187,578 | 96,921 | 47,827 |
| Equipped Box | 171,902 | 166,888 | 126,279 | 78,408 |
| Total Box | 486,008 | 354,466 | 223,200 | 126,235 |
| Refrigerators | 83,951 | 62,952 | 42,220 | 33,884 |
| Gondola | 176,154 | 151,709 | 112,963 | 87,171 |
| Hopper | 344,113 | 317,805 | 241,434 | 181,300 |
| Covered Hopper | 156,198 | 169,953 | 155,794 | 147,563 |
| Flat | 97,948 | 96,667 | 84,595 | 82,050 |
| Other | 37,464 | 26,938 | 19,084 | 10,558 |
| Total Cars | 1,381,836 | 1,180,490 | 879,290 | 668,761 |
| Serviceable Cars: | | | | |
| Plain Box | 280,751 | 164,170 | 82,190 | 42,085 |
| Equipped Box | 152,503 | 145,037 | 104,701 | 68,351 |
| Total Box | 433,254 | 309,207 | 186,891 | 110,436 |
| Refrigerators | 77,585 | 57,850 | 38,046 | 29,477 |
| Gondola | 163,075 | 136,375 | 104,317 | 80,735 |
| Hopper | 327,141 | 297,400 | 223,138 | 167,257 |
| Covered Hopper | 147,144 | 159,753 | 142,541 | 140,418 |
| Flat | 91,709 | 89,861 | 79,746 | 78,585 |
| Other | 35,698 | 25,412 | 17,898 | 9,023 |
| Total Cars | 1,275,606 | 1,075,858 | 792,577 | 615,931 |
| | Calendar Year | | | |
| | 1974 | 1979 | 1984 | 1989 |
| Turnaround Time—Days: | | | | |
| Box | 25.0 | 31.2 | 40.3 | 35.4 |
| Refrigerator | 34.0 | 35.9 | 52.3 | 39.8 |
| Gondola | 18.3 | 21.1 | 20.3 | 14.0 |
| Hopper | 13.3 | 14.3 | 14.7 | 11.4 |
| Covered Hopper | 22.4 | 25.5 | 30.4 | 27.0 |
| Flat | 13.7 | 15.0 | 12.5 | 9.8 |
| Average All Cars | 19.6 | 22.1 | 22.8 | 18.4 |

Source: Association of American Railroads.

TABLE 9.—Abandonments, Construction, and New Acquisitions and Operations.¹

| | Fiscal Year 1988 | | Fiscal Year 1989 | | Fiscal Year 1990 | |
|--|---------------------|----------------|---------------------|----------------|---------------------|-------|
| | Num- ber | Miles | Num- ber | Miles | Num- ber | Miles |
| 1. Abandonments: | | | | | | |
| Applications filed | 250 | 1,470 | 235 | 809 | 218 | 505 |
| Granted | 47 | 1,293 | 35 | 699 | 15 | 256 |
| Denied | 3 | 33 | 2 | 76 | 1 | 28 |
| Dismissed | 5 | 90 | 8 | 309 | 4 | 133 |
| Dismissed because of sale . . . | 4 | 110 | 4 | 84 | 1 | 1 |
| Petitions for exemptions filed . | 46 | 737 | 50 | 616 | 37 | 907 |
| Granted | 43 | 807 | 42 | 587 | 31 | 690 |
| Denied | 0 | 0 | 0 | 0 | 1 | 71 |
| Dismissed | 3 | 33 | 3 | 30 | 2 | 17 |
| Dismissed because of sale . . . | 0 | 0 | 0 | 0 | 5 | 65 |
| Notices of exemption filed . . . | 84 | 1,183 | 113 | 1,084 | 88 | 750 |
| Granted | 71 | 897 | 103 | 946 | 88 | 661 |
| Dismissed | 13 | 298 | 16 | 139 | 3 | 28 |
| Dismissed because of sale . . . | 0 | 0 | 0 | ² 7 | 0 | 0 |
| 2. Construction: | | | | | | |
| Applications filed | 0 | 0 | 1 | 1 | 1 | 3 |
| Granted | 0 | 0 | 1 | 1 | 0 | 0 |
| Denied | 0 | 0 | 0 | 0 | 0 | 0 |
| Dismissed | 0 | 0 | 0 | 0 | 0 | 0 |
| Petitions for exemptions filed . | 3 | ³ 8 | 2 | 9 | 7 | 10 |
| Granted | 0 | 0 | 2 | 8 | 3 | 7 |
| Denied | 0 | 0 | 0 | 0 | 0 | 0 |
| Dismissed | 0 | 0 | 2 | 2 | 0 | 0 |
| 3. Acquisitions and Operations | | | | | | |
| Under 49 U.S.C. 10901: | | | | | | |
| Applications filed | 0 | 0 | 0 | 0 | 0 | 0 |
| Granted | 0 | 0 | 0 | 0 | 0 | 0 |
| Denied | 0 | 0 | 0 | 0 | 0 | 0 |
| Dismissed | 0 | 0 | 0 | 0 | 0 | 0 |
| Notices of exemptions ⁴ filed . | 58 | 2,822 | 40 | 1,193 | 46 | 3,093 |
| Granted | 58 | 5,581 | 42 | 1,538 | 43 | 3,027 |
| Dismissed | 1 | 13 | 3 | 29 | 3 | 26 |

Source of Data: Office of Proceedings computer data bases.

¹ Information contained in items 4, 5 and 6 of last year's Table 3, now appear in Table 10.

² This line segment was a portion of a line approved for abandonment. The case is counted as a grant above.

³ Last year's report incorrectly reported the mileage as "0".

⁴ In previous reports, figures were not available for the first year of the Commission's class exemption. Those figures were: In fiscal year 1986, 34 notices were filed embracing 3,821 miles of railroad; 28 were granted embracing 2,562 miles; and 6 were pending embracing 1,269. Two notices were rejected by letter and were not counted as "filed". In fiscal year 1987, 53 notices were filed embracing 4,278 miles; 543 were granted embracing 4,875 miles; none were rejected or dismissed; and 5 were pending at the end of the year.

TABLE 10.—Intercarrier Financial Transactions.¹

| | Fiscal Year 1988 | Fiscal Year 1989 | Fiscal Year 1990 |
|---|------------------------|------------------------|------------------------|
| 1. Consolidations, Acquisitions | | | |
| Under 49 U.S.C. 11343: | | | |
| Applications filed | 6 | 14 | 14 |
| Granted | 3 | 8 | 15 |
| Denied | 3 | 0 | 0 |
| Dismissed | 0 | 1 | 1 |
| Petitions for exemption filed | 19 | 26 | 12 |
| Granted | 17 | 28 | 10 |
| Denied | 0 | 0 | 1 |
| Dismissed | 0 | 0 | 2 |
| Notices of Exemption filed | N/A | N/A | 29 |
| Granted | N/A | N/A | 26 |
| Dismissed | N/A | N/A | 0 |
| 2. Trackage Rights: | | | |
| Applications filed ² | 7 | 16 | 9 |
| Granted | 3 | 6 | 5 |
| Denied | 6 | 4 | 0 |
| Dismissed | 1 | 0 | 1 |
| Petitions for exemption filed | N/A | N/A | 1 |
| Granted | N/A | N/A | 1 |
| Denied | N/A | N/A | 1 |
| Dismissed | N/A | N/A | 0 |
| Notices of exemption filed | N/A | N/A | 61 |
| Granted | N/A | N/A | 55 |
| Dismissed | N/A | N/A | 1 |
| 3. Leases: | | | |
| Applications filed | 0 | 2 | 1 |
| Granted | 0 | 1 | 2 |
| Denied | 0 | 0 | 0 |
| Dismissed | 0 | 0 | 0 |
| Petitions for exemption filed | N/A | 16 | 3 |
| Granted | N/A | 12 | 5 |
| Denied | N/A | 0 | 0 |
| Dismissed | N/A | 1 | 1 |
| Notices of Exemption filed | N/A | N/A | 0 |
| Granted | N/A | N/A | 1 |
| Dismissed | N/A | N/A | 0 |

N/A = Not applicable.

¹ This table contains and expands the information reported in items 4, 5, and 6 from last year's Table 3. However, mileages are not reported because mileages are not normally required for these transactions.² Includes formal applications and petitions for exemption for fiscal years 1988 and 1989. For fiscal year 1990, includes only formal applications.

TABLE 11.—Extension of Time Limits Under Section 10327(k)—Rail Proceedings, Fiscal Year 1990.

| Proceeding | Type of Proceeding | Notification of Extension | Reason and Duration |
|---|--------------------|--|--|
| No. 38301S, Coal Trading Corporation v. Baltimore & Ohio Railroad, et al. | Complaint | November 17, December 19, 1989, and January 17, 1990 | 30, 30, and 170-day extensions to consider complex legal issues |
| No. 39886, Huron Valley Steel Company v. Seaboard System Railroad Inc., et al. | Complaint | July 11, 1990 | 30-day extension to consider complex legal issues |
| Finance Docket No. 31387 (Sub 1), Canadian National Railway Company—Lease from Grand Trunk Western Railway Company | Application | January 31 and July 19, 1990 | Two 30-day extensions to consider complex legal issues |
| Finance Docket No. 31424, Acquisition by Tampa Bay & Western Transportation, Inc., of a CSX Transportation, Inc., Line between Sulphur Springs, and Broco, FL | Application | January 5, March 2, and May 3, 1990 | 30, 60, and 70-day extensions to consider complex legal issues |
| Finance Docket No. 31469, South Carolina Central Railroad Company, Inc., — Purchase—CSX Transportation, Inc., Line between East Greenville, and Laurens, SC | Application | February 20, and March 26, 1990 | 30 and 120-day extensions to consider complex labor related issues |

TABLE 11.—Extension of Time Limits Under Section 10327(k)—Rail Proceedings, Fiscal Year 1990.—Continued

| Proceeding | Type of Proceeding | Notification of Extension | Reason and Duration |
|---|--------------------|--|---|
| Finance Docket No. 31494, Intermountain Western Railroad Company—Purchase—Union Pacific Railroad Company, Boise Group Branch Lines | Application | January 18, March 16, and May 15, 1990 | 30, 70 and 50-day extensions to consider complex issues |
| Finance Docket No. 31530, Wilmington Terminal Railroad Company—Purchase and Lease—CSX Transportation, Inc., Lines between Savannah, Rhine, Vidalia, and Macon, GA | Application | March 20, and May 7, 1990 | 30 and 31-day extensions to consider complex issues |

Source of Data: Office of Proceedings computer data bases.

APPENDIX C

PUBLICATIONS

The Commission issues many publications of general interest as well as those directed to the consumer. The Commission additionally issues technical and statistical publications dealing with transportation regulation.

Publications followed by an asterisk may be purchased from the Government Printing Office. For convenience, the GPO Stock number has been included. Price information may be obtained by contacting:

Superintendent of Documents
Government Printing Office
Washington, DC 20402
Telephone (202) 783-3238

Publications without an asterisk may be obtained free of charge by writing to the ICC office listed after the title.

- Office of Compliance and Consumer Assistance (OCCA)
Interstate Commerce Commission
Washington, DC 20423
- Office of Economics (OE)
Interstate Commerce Commission
Washington, DC 20423
- Office of External Affairs (OEA)
Interstate Commerce Commission
Washington, DC 20423
- Office of Secretary (SE)
Publications Room (Room 1211)
Washington, DC 20423
- Office of Public Assistance (OPA)
Interstate Commerce Commission
Washington, DC 20423

ANNUAL REPORTS OF COMPANIES

These reports may be examined in the Office of Economics' Public Reference Room (Room 3378) from 8:30 a.m. to 5:00 p.m. Photocopies of these reports, at a cost of 60 cents per page, with a \$3.00 minimum charge per order, may be obtained by writing to the Office of the Secretary, Room 2115, ICC, Washington, DC 20423.

COMMISSION DECISIONS

Individual copies of the Commission's decisions may be obtained up to one year from the date of service from Dynamic Concepts, Inc. (DCI), Room 2229, ICC, Washington, DC 20423, or by calling (202) 289-4357 or 289-4359. Printed reports in the "ICC" and "MCC" series are also available from the Commission's Publications Room while supplies last. Printed reports in the "ICC 2nd Series" are available through DCI.

CONSUMER PUBLICATIONS

OCP-100 When You Move: Your Rights and Responsibilities—OCCA

This booklet explains consumer rights when moving household goods across state lines.

GENERAL PUBLICATIONS

Annual Reports of the Commission to Congress:

- 101st 1987 (026-000-01258-9)*
- 102nd 1988 (026-000-01267-8)*
- 103rd 1989 Copies are available from the ICC
- 104th 1990 stock number not available, contact GPO*

*Code of Federal Regulations, Title 49, Revised to October 1990**

Parts 1000-1199: General provisions, enforcement, motor carriers, freight forwarders, intermodal transportation, rules of practice, railroad consolidation, finance and reorganization special procedures.

Parts 1200-End: Uniform system of accounts, preservation of records, reports, valuation, handling of national security information and classified material, passenger and freight tariffs and schedules, and credit regulations.

Interstate Commerce Act

Available from the Government Printing Office in U.S. Code, 49 U.S.C. Sec. 10101 et seq.*

ICC Register

A daily summary of Commission decisions, notices and motor carrier applications. Subscription information is available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Telephone (202) 783-3238.

INFORMATIONAL PUBLICATIONS

Before You Start a Small Railroad: A Brief Overview of Things to Consider—OPA (September 1988)

Department of Transportation and State Regulations—Bulletin No. 9—OPA

Fees for Various and Related Services of the Interstate Commerce Commission—OPA (October 1989)

Public Participation in Interstate Commerce Commission Cases Under the Bus Regulatory Reform Act of 1982—OPA

Public Participation in Rail Abandonment Cases Under the Interstate Commerce Act—OPA (August 1990)

Illegal Lumping—OCCA

Addresses illegal "lumper" practices.

Lease-Purchase Plans—OPA

Small Carrier Transfer and Name Change Procedures—OPA (December 1988)

So You Want to Start a Small Railroad—ICC Small Railroad Application Procedures—OPA (April 1990)

State Regulatory Commissions and Fuel Tax Divisions—OPA (June 1989)

Inspector General Reports

Photocopies of these semiannual reports are available at a cost of 60 cents per page, with a minimum charge per order, from the Office of the Secretary, \$3.00, Room 2115, ICC, Washington, DC 20423. Telephone (202) 275-1295.

Speeches and Statements—OEA

ICC Commissioner's speeches or statements before Congressional committees may be obtained on an individual basis from the Office of External Affairs, Room 4136, ICC, Washington, DC 20423. Telephone (202) 275-7252.

SPECIALIZED PUBLICATIONS

Motor

Listing of Minority and Female Motor Carriers—OPA (October 1989)

Staff Report No. 12—Highlights of Activity in the Property Motor Carrier Industry—OE (January 1990)

Transport Statistics in the U.S. Motor Carriers—SE

(First Release, Part 2, 1989)

(Second Release, Part 2, 1989)

"Transportation: Trucking Services" as appearing in *U.S.C Industrial Outlook*—OE (1989)

The Commission's Office of Economics publishes quarterly reports on selected earnings data—SE

- *Large Class I Motor Carriers of Property;*
- *Large Class I Motor Carriers of Passengers; and*
- *Large Class I Household Carriers*

Rail

Class I Line-Haul Railroads, Selected Earnings Data—SE (Quarterly)

Railroad TOFC/COFC Monitoring Study—OE (December 1985)

Rail Rates Experience Multi-Year Decline—OE (May 1990)

A Survey of Shipper Satisfaction with Service and Rates of Shortline and Regional Railroads—Joint Staff Study—EO (August 1989)

Effects of the Boxcar Exemption—OE (November 1988)

Report of Railroad Employment Class I Line-Haul Railroads—SF

Coal Transportation and the Staggers Rail Act of 1980—OE (October 1990)

Transport Statistics in the U.S., Railroad Companies—SE (1989)

Wage Statistics of Class I Railroads in the U.S.—SE

Statement No. M-350 (monthly)
Transport Statistics in the U.S.: Railroads (First Release 1990)—SE

Statement No A-300 (Calendar 1989)—SE

URCS—Uniform Railroad Costing System, Phase II, Movement Costing Program User's Manual—AC

Description of the independent interactive computer program for estimating cost of specific, individual rail movements (May 1990)

URCS—Uniform Railroad Costing System, Phase II, Movement Costing Program Technical Manual—OE

Description of Fortran costing programs compatible to Data General Corporation (DEC) and IBM equipment (December 1989)

APPENDIX D

Appropriations and Employment

The following statement shows average full-time employment and total appropriations for the fiscal years 1956 to 1990 for activities included under the current appropriation title "Salaries and Expenses".

| Fiscal Year | Appropriation | Average Employment | Fiscal Year | Appropriation | Average Employment |
|-------------|---------------|--------------------|-------------|---------------|--------------------|
| 1956... | 12,896,000 | 1,902 | 1974... | 40,681,000 | 1,874 |
| 1957... | 14,879,696 | 2,090 | 1975... | 44,970,000 | 1,986 |
| 1958... | 17,412,375 | 2,238 | 1976... | 52,455,000 | 2,034 |
| 1959... | 18,747,800 | 2,268 | TQ | 12,290,000 | 2,113 |
| 1960... | 19,650,000 | 2,344 | 1977... | 60,786,000 | 2,084 |
| 1961... | 21,451,500 | 2,386 | 1978... | 65,575,000 | 2,040 |
| 1962... | 22,075,000 | 2,400 | 1979... | 70,400,000 | 2,040 |
| 1963... | 23,502,800 | 2,413 | 1980... | 79,063,000 | 1,946 |
| 1964... | 24,670,000 | 2,408 | 1981... | 82,400,000 | 1,852 |
| 1965... | 26,715,000 | 2,339 | 1982... | 70,150,000 | 1,540 |
| 1966... | 27,540,000 | 2,376 | 1983... | 65,600,000 | 1,319 |
| 1967... | 27,169,000 | 1,929 | 1984... | 60,000,000 | 1,158 |
| 1968... | 23,846,000 | 1,899 | 1985... | 51,100,000 | 915 |
| 1969... | 24,664,000 | 1,808 | 1986... | 48,408,000 | 806 |
| 1970... | 27,742,660 | 1,802 | 1987... | 46,802,000 | 732 |
| 1971... | 28,442,000 | 1,731 | 1988... | 44,294,000 | 712 |
| 1972... | 30,640,000 | 1,676 | 1989... | 43,115,000 | 699 |
| 1973... | 33,720,000 | 1,765 | 1990... | 44,205,000 | 665 |

Source: Appropriation data; Annual Appropriation Acts. Average Employment; Commission's report to OPM, SF 113-G.

Status of Appropriations

Status of fiscal year 1990 appropriations as of September 30, 1990.

| | |
|--|--------------|
| Salaries and expenses: | |
| Total appropriations | \$44,450,000 |
| Reimbursements | 282,612 |
| Balanced Budget and Emergency Deficit Control Act of 1985 Reduction | (245,000) |
| Total obligations | 44,438,374 |
| Unobligated balance lapsing | 49,238 |
| Directed Rail Service: | |
| Unobligated balance available from prior appropriation | —0— |
| Total obligations: | |
| Payments to carriers | —0— |
| Recoveries of prior years obligations | —0— |
| Unobligated balance available (end of year) | —0— |

Receipts

Status of receipt accounts as of September 30, 1990.

| | |
|--|--------------------|
| Registration and filing fees | \$6,659,978 |
| Fines, penalties, and forfeitures .. | 365,623 |
| Service charges for allotments of pay for savings account | —0— |
| Charges for administrative services | 72,404 |
| Recoveries from railroad loan guarantees | —0— |
| Miscellaneous recoveries and refunds | —0— |
| Withholding for military benefits .. | 5,813 |
| Interest and penalties for late payments | 61 |
| Total Receipts | \$7,103,879 |

Source: Commission's Accounting System.

APPENDIX E

Carrier Financial and Statistical Data

TABLE 1.—Carriers regulated by the Commission.

| | Number |
|---|--------|
| Carriers subject to Uniform System of Accounts and/or required to file annual & periodic reports as of October 1, 1990: | |
| Railroads, class I | 16 |
| Motor Carriers, class I passengers | 31 |
| Motor Carriers, class I property | 870 |
| Motor Carriers, class II property | 1,169 |
| Holding companies (rail) | 3 |
| Total | 2,089 |
| Carriers and organizations not required to file reports as of October 1, 1990: | |
| Railroads, class II | 25 |
| Railroads, class III | 330 |
| Railroads, other | 208 |
| Carlines (companies that furnish cars used on rail lines) | 166 |
| Holding companies (motor) | 74 |
| Class II motor carriers of passengers | 3,894 |
| Class I and II motor carriers of property relieved from reporting | 266 |
| Class III motor carriers of property | 42,109 |
| Water carriers | 327 |
| Freight forwarders | 555 |
| Rate bureaus and organizations | 71 |
| Coal slurry pipeline company | 1 |
| Protective services companies | 6 |
| Total | 48,032 |
| Grand total | 50,121 |

NOTE: Railroad companies, motor carriers of passengers, and motor carriers of property are classified based on gross annual operating revenues at specified levels for three consecutive years. The revenues are adjusted by a deflator factor to eliminate the effects of inflation. The inflation factor for railroad companies is based on the annual average Railroad Freight Price Index. The inflation factor for motor carriers of property is based on the annual average Producers Price Index for all commodities. The inflation factor for motor carriers of passengers is based on the Producers Price Index of finished goods. The following table contains the unadjusted revenue levels for each transportation mode and the respective 1989 deflator factor for each mode used to classify carriers for accounting and reporting purposes:

| CARRIER | DEFLATOR | CLASSIFICATION THRESHOLD |
|------------------------------|----------|--|
| Railroads | .5348 | Class I—\$50 million or more Class II—Between \$10 million and \$50 million Class III—\$10 million or less |
| Motor carriers of property | .8004 | Class I—\$5 million or more Class II—Between \$1 million and \$5 million Class III—Less than \$1 million |
| Motor carriers of passengers | .9528 | Class I—\$5 million or more Class II—Less than \$5 million |

TABLE 2.—Class I line-haul railroads shareholders' equity, long-term debt and dividends (dollars in thousands).

| Item | 1987 | 1988 | 1989 |
|--|-------------|-------------|-------------|
| 1. Shareholders' equity: | | | |
| a. Capital stock. | \$3,024,635 | \$2,939,236 | \$2,716,399 |
| b. Capital surplus | 6,094,608 | 6,528,872 | 6,144,234 |
| c. Retained income. | 16,496,846 | 17,053,325 | 16,892,165 |
| d. Total equity. | 25,616,089 | 26,521,433 | 25,752,798 |
| 2. Long-term debt. | 8,302,856 | 8,287,377 | 9,256,144 |
| 3. Total equity and debt. | 33,918,945 | 34,808,810 | 35,008,942 |
| 4. Ratio of debt to total equity and debt (%) | 24.48 | 23.81 | 26.44 |
| 5. Cash dividends | \$1,252,293 | \$1,813,877 | \$1,911,040 |

TABLE 3.—Class I line-haul railroads, condensed income statement, financial ratios and employee data (dollars in thousands).

| Item | 1987 | 1988 | 1989 |
|--|--------------|--------------|--------------|
| 1. Number of carriers represented | 18 | 17 | 15 |
| CONDENSED INCOME STATEMENT | | | |
| 2. Operating revenues: | | | |
| a. Freight | \$25,797,002 | \$27,154,961 | \$27,058,765 |
| b. Passenger | 93,559 | 84,677 | 90,697 |
| c. Total operating revenues | 26,622,482 | 27,999,839 | 27,955,959 |
| 3. Total operating expenses | 23,878,116 | 24,889,015 | 25,037,666 |
| 4. Net railway operating income | 1,756,460 | 1,967,612 | 1,895,262 |
| 5. Ordinary income | 1,965,475 | 2,270,307 | 2,009,094 |
| 6. Extraordinary items—net ¹ | 89,746 | 106,440 | 193,714 |
| 7. Net income | 2,055,221 | 2,376,747 | 2,202,808 |
| NET INVESTMENT AND EQUITY | | | |
| 8. Net investment in transportation property and equipment plus working capital ² | 35,768,874 | 36,761,080 | 36,850,743 |
| 9. Shareholders' equity | 25,616,089 | 26,521,433 | 25,752,798 |
| FINANCIAL RATIOS (PERCENT) | | | |
| 10. Operating ratio (L.3/L.2c) | 89.69 | 88.89 | 89.56 |
| 11. Return on net inv. (L.4/L.8) | 4.91 | 5.35 | 5.14 |
| 12. Return on equity: | | | |
| a. Ordinary income basis (L.5/L.9) | 7.67 | 8.56 | 7.80 |
| b. Net income basis (L.7/L.9) | 8.02 | 8.96 | 8.55 |
| EMPLOYEE DATA | | | |
| 13. Average number | 248,526 | 236,891 | 227,548 |
| 14. Compensation: | | | |
| a. Total | \$9,373,470 | \$9,306,857 | \$9,043,221 |
| b. Per hour paid for | 15.112 | 15.640 | 15.762 |

¹ Includes income taxes on extraordinary items and discontinued operations and accounting changes.

² Accumulated deferred income tax reserves have been subtracted from the net investment base in accordance with the modification approved by the Commission in Ex Parte No. 393 (Sub-No. 1), Standards for Railroad Revenue Adequacy, served December 31, 1986.

TABLE 4.—Class I line-haul railroads current assets and current liabilities (dollars in thousands).

| Item | 1988 amount | Percent ¹ of change | 1989 amount | Percent ² of change |
|---|----------------|-----------------------------------|----------------|-----------------------------------|
| 1. Cash and temporary cash investments | \$1,783,010 | - 23.4 | \$1,062,858 | - 40.4 |
| 2. Materials and supplies | 927,262 | 7.0 | 898,772 | - 3.1 |
| 3. Total current assets | 8,440,128 | 2.7 | 6,739,418 | - 20.2 |
| 4. Total current liabilities | 8,657,310 | 5.8 | 8,854,250 | 2.3 |
| 5. Net working capital: | | | | |
| a. Including materials & supplies | (217,182) | — | (2,114,832) | — |
| b. Excluding materials & supplies | (1,144,444) | — | (3,013,604) | — |
| RATIOS | | | | |
| 6. Current assets to current liabilities: | | | | |
| a. Including materials & supplies | 0.97 | | 0.76 | |
| b. Excluding materials & supplies | 0.87 | | 0.68 | |
| 7. Cash and temporary cash investments to current liabilities | 0.21 | | 0.12 | |

¹ Represents change from 1987.² Represents change from 1988.

Table 5.—Class I motor carriers of property condensed income statement, financial ratios and employee data (dollars in thousands).

| Item | 1987 | 1988 | 1989 |
|---|--------------|--------------|--------------|
| 1. Number of carriers represented ¹ | 652 | 674 | 681 |
| CONDENSED INCOME STATEMENT | | | |
| 2. Operating revenues: | | | |
| a. Freight-intercity-common carrier | \$30,472,066 | \$32,490,30 | \$34,827,532 |
| b. Freight-intercity-contract carrier | 3,047,656 | 3,914,241 | 4,662,542 |
| c. Freight-local cartage | 274,303 | 227,309 | 544,324 |
| d. Intercity transportation for other motor carriers | 166,150 | 194,881 | 179,553 |
| e. Other operating revenue | 3,170,008 | 2,997,620 | 393,430 |
| f. Private carriage & CIH revenues ² | N/A | N/A | 508 |
| g. Household goods revenues ² | N/A | N/A | 2,845,968 |
| h. Total operating revenues | 37,130,183 | 39,824,356 | 43,453,857 |
| 3. Operating expenses | 5,978,954 | 38,117,479 | 41,847,628 |
| 4. Lease of distinct operating unit—net ² | 1,266 | 39 | N/A |
| 5. Net carrier operating income | 1,152,495 | 1,706,916 | 1,606,229 |
| 6. Other income and miscellaneous deductions from income—net | (253,918) | (267,913) | (375,934) |
| 7. Income taxes on ordinary income ³ | 364,979 | 375,166 | 447,190 |
| 8. Ordinary income | 533,598 | 1,063,837 | 783,105 |
| 9. Extraordinary items—net ⁴ | 36,896 | (35,174) | 42,801 |
| 10. Net income | 570,494 | 1,028,663 | 825,906 |
| NET INVESTMENT AND EQUITY | | | |
| 11. Net investment in carrier operating property and equipment plus working capital | 9,557,900 | 10,937,750 | 2,063,523 |
| 12. Shareholders' and proprietors' equity | 8,460,116 | 7,963,269 | 9,476,920 |
| FINANCIAL RATIOS (PERCENT) | | | |
| 13. Operating ratio (L 3/L 2h) | 96.90% | 95.71 | 6.30% |
| 14. Return on net investment (L 5/L 11) | 12.06% | 15.61 | 13.31% |
| 15. Return on equity (L 10/L 12) | 6.74% | 12.92 | 8.72% |
| EMPLOYEE DATA | | | |
| 16. Average number | 537,956 | 560,332 | 602,903 |
| 17. Compensation | \$14,341,045 | \$15,399,887 | \$16,563,138 |

N/A = Not applicable.

¹ Carriers for which data was complete and available at publication. Data has not been audited by the Commission.² Comparative data not available due to report form changes.³ Does not include income taxes applicable to sole proprietorships, partnerships and corporations that have elected to be taxed under Sec. 1372(a) of the Internal Revenue Code. Also does not include taxes on extraordinary items. Includes provisions for deferred taxes.⁴ Includes income taxes on extraordinary items and discontinued operations and accounting changes.

TABLE 6.—Class I intercity motor carriers of passengers condensed income statement, and financial ratios (dollars in thousands).

| Item | 1987 | 1988 | 1989 |
|---|-----------|-----------|-----------|
| 1. Number of carriers represented ¹ | 32 | 21 | 21 |
| CONDENSED INCOME STATEMENT | | | |
| 2. Operating revenues: | | | |
| a. Passenger intercity schedules | \$751,643 | \$825,149 | \$892,508 |
| b. Local and suburban schedules | 5,631 | 9,784 | 5,237 |
| c. Charter or special service . . | 160,408 | 144,841 | 170,635 |
| d. Other operating revenues . . | 161,223 | 141,930 | 144,757 |
| e. Total operating revenues . . | 1,078,905 | 1,121,704 | 1,213,137 |
| 3. Operating expenses | 1,080,573 | 1,059,068 | 1,141,538 |
| 4. Net carrier operating income . . | (1,668) | 62,636 | 71,599 |
| 5. Income tax on ordinary income ² . | (11,027) | 2,635 | 2,713 |
| 6. Ordinary income | (21,577) | 6,277 | 7,157 |
| 7. Extraordinary items-net ³ | — | (6,477) | (67) |
| 8. Net income | (21,577) | (200) | 7,090 |
| EQUITY | | | |
| 9. Shareholders' equity | 150,630 | 17,163 | 118,058 |
| FINANCIAL RATIOS (PERCENT) | | | |
| 10. Operating ratio (Line 3/Line 2e) . . | 100.15 | 94.42 | 94.10 |
| 11. Return on equity (Line 8/Line 9) . . | — | — | 6.01 |

NOTE: The number of Class I intercity motor carriers of passengers decreased substantially in 1988 because, effective 1988, the classification limit for Class I bus companies was raised to \$5 million—indexed for inflation—from the former \$3 million.

¹ Carriers for which financial and statistical data were available. Data was not audited by Commission.

² Does not include taxes applicable to sole proprietorships, partnership and corporations that have elected to be taxed under Sec. 1372(a) of the Internal Revenue Code. Also does not include taxes on extraordinary items. Includes provisions for deferred taxes.

³ Includes income taxes on extraordinary items and discontinued operations and accounting changes.

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